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Federal Register

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Presidential Documents

Title 3—

The President

Presidential Determination No. 2000–8 of December 17, 1999

Suspension of Limitations Under the Jerusalem Embassy Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me as President by the Constitution and the laws of the United States, including section 7(a) of the Jerusalem Embassy Act of 1995 (Public Law 104–45) (the ''Act''), I hereby determine that it is necessary to protect the national security interests of the United States to suspend for a period of 6 months the limitations set forth in section 3(b) and 7(b) of the Act.

You are hereby authorized and directed to transmit this determination to the Congress, accompanied by a report in accordance with section 7(a) of the Act, and to publish the determination in the **Federal Register**.

This suspension shall take effect after transmission of this determination and report to the Congress.

William J Clinton

THE WHITE HOUSE,
Washington, December 17, 1999.

[FR Doc. 99–33927
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Rules and Regulations

Federal Register

Vol. 64, No. 249

Wednesday, December 29, 1999

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 534

RIN 3206–AI59

Pay Under Other Systems

AGENCY: Office of Personnel Management

ACTION: Technical amendment.

SUMMARY: This document contains a technical amendment to the final regulations that were originally published in the **Federal Register** on Friday, January 2, 1987 (52 FR 1). This technical amendment implements statutory changes in the total amount of performance awards that may be granted to career members of the Senior Executive Service in a fiscal year. These changes were enacted by Public Law 105–277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, October 21, 1998.

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Anne Kirby, (202) 606–1610, FAX (202) 606–0557, or email to seshelp@opm.gov.

SUPPLEMENTARY INFORMATION: Public Law 105–277, enacted on October 21, 1998, amends 5 U.S.C. 5384(b)(3) to increase the total amount of SES performance awards that may be paid during a fiscal year. The public law changed the award pool configurations to 10 percent (formerly 3 percent) of aggregate career SES basic pay, or 20 percent (formerly 15 percent) of the average annual rates of career SES basic pay. The new award pool provisions could be used for SES performance awards paid any time after enactment of the public law.

In accordance with 5 U.S.C. 553, I find that, as these amendments are mandated by statute, notice and public procedure thereon are impracticable, unnecessary, and contrary to the public interest.

Regulatory Flexibility Act

I certify that these changes will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

List of Subjects in 5 CFR Part 534

Government employees, Hospitals, Students, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending 5 CFR part 534 as follows:

PART 534—PAY UNDER OTHER SYSTEMS

1. The authority citation for part 534 continues to read as follows:

Authority: 5 U.S.C. 1104, 5307, 5351, 5352, 5353, 5376, 5383, 5384, 5385, 5541, and 5550a.

Subpart D—Pay and Performance Awards Under the Senior Executive Service

2. Amend § 534.403 by revising paragraph (b) to read as follows:

§ 534.403 Performance awards.

* * * * *

(b) The total amount of performance awards paid during a fiscal year by an agency may not exceed the greater of—

(1) Ten percent of the aggregate career SES basic pay for the agency as of the end of the fiscal year prior to the fiscal year in which the award payments are made; or

(2) Twenty percent of the average annual rates of basic pay for career SES appointees of the agency as of the end of the fiscal year prior to the fiscal year in which the award payments are made.

* * * * *

[FR Doc. 99–33583 Filed 12–28–99; 8:45 am]

BILLING CODE 6325–01–U

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 225

RIN 0584–AC06

Summer Food Service Program: Program Meal Service During the School Year, Paperwork Reduction, and Targeted State Monitoring

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule contains changes to the Summer Food Service Program as a result of a provision in the Healthy Meals for Healthy Americans Act of 1994 which allows Program meal service to be provided during periods of unanticipated school closures such as teacher strikes. Additionally, this rule makes discretionary changes to simplify sponsor and site applications and State agency monitoring requirements. Except for the State agency monitoring requirements, which were changed substantially, the final rule makes only minor modifications to the provisions of the proposed rule. These changes are intended to reduce unnecessary and duplicative administrative burdens for Summer Food Service Program sponsors and State agencies.

EFFECTIVE DATE: January 28, 2000.

FOR FURTHER INFORMATION CONTACT: Melissa Rothstein (Summer Food Service Program) at the following address: Policy and Program Development Branch, Child Nutrition Division, Room 1006, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302–1500, or by telephone at: (703) 305–2620.

SUPPLEMENTARY INFORMATION:

Background

The Summer Food Service Program (SFSP) provides free meals to children at approved feeding sites in areas with significant concentrations of low-income children during school vacations. SFSP meals are intended to take the place of the meals that children normally receive through the National School Lunch and Breakfast Programs during the school year.

Generally, Program benefits are limited to times when school is not in session during the months of May through September. Section 13(c)(1) of the National School Lunch Act (NSLA) (42 U.S.C. 1761(c)(1)) provides an exception to these timeframes for areas that operate on a year-round, or continuous school calendar basis. In these areas, Program benefits may be provided at any time of the year that children are on school vacation. An additional exception was authorized by the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103–448), which permits the SFSP to operate in areas with unanticipated school closures during October through April.

On October 13, 1998, we published a proposed rule for the SFSP in the **Federal Register** (63 FR 54617). The rule proposed changes to the Program in the following three areas:

- Unanticipated school closures. The proposed rule set forth criteria for participation of sponsors and sites in the SFSP during periods of unanticipated (*i.e.,* emergency) school closures during the months of October through April, and included language from Pub. L. 103–448 on the types of situations that qualify;
- Paperwork reduction. The proposed rule removed unnecessary and duplicative sponsor and site application requirements for experienced sponsors and sites; and,
- Targeted State agency monitoring. The proposed rule revised State agency monitoring requirements to better target efforts to new and large sponsors, and those sponsors who have operational deficiencies or experience significant staff turnover from one year to the next.

The proposed rule had a sixty day public comment period which ended on December 14, 1998. During this time, we received a total of 17 comments. Of these, 13 were from State agencies, 2 were from SFSP sponsors (both of which were local school districts), and 2 were from community organizations. In general, commenters were supportive of the proposed rule. Every commenter addressed the area of ‘‘paperwork reduction’’ in some capacity, and primarily viewed the changes as positive with only minor modifications needed. The final rule is being published based on these comments.

A. Unanticipated School Closures

General Discussion

Since the beginning of the SFSP, there have been times when a single school or an entire school system did not open as scheduled at the end of the summer (*e.g.,* in the case of a teacher strike). Prior to 1994, the NSLA prohibited the SFSP to operate during the months of October through April unless the school was in session on a year-round or continuous school calendar basis. Since the National School Lunch and Breakfast Programs may only operate when school is in session, many children were denied a nutritious meal when the schools were closed in these emergency situations.

In response to these circumstances, the President signed into law the Healthy Meals for Healthy Americans Act of 1994. Section 114(c) of this law amended section 13(c)(1) of the NSLA to allow SFSP meals to be served at ‘‘non-school sites to children who are not in school for a period during the months of October through April due to a natural disaster, building repair, court order or similar cause’’.

Proposed Rule Provisions

In addition to setting forth the circumstances warranting implementation, the October 13, 1998, proposed rule detailed how existing requirements for SFSP participation would be applied when the Program operates during unanticipated school closures. Specifically, the proposed rule:

- Listed circumstances under which SFSP sponsors and sites are eligible to participate in the Program during unanticipated school closures. These circumstances included natural disaster, major building repairs, court orders relating to school safety or other issues, labor-management disputes, and similar causes as approved by the State agency;
- In accordance with the explicit language of the law, permitted only *non-school sites* to be eligible feeding sites in these situations, although school food authorities would be eligible as *sponsors*;
- Waived eligibility documentation for sites that had previously participated in the SFSP in the current year or prior two calendar years; documentation of site eligibility was still required for all other sites;
- Streamlined the application process for sponsors which had successfully participated in the Program in the current year or either of the two prior calendar years;
- Required that all sponsors participating during unanticipated school closures enter into agreements with the State agency to operate the Program; and
- Provided State agencies discretion in conducting pre-approval visits of sponsors operating the Program during unanticipated school closures, but maintained the requirement that *sponsors* visit all of their feeding sites prior to Program operations.

Comments Received and Final Rule Provisions

Non-School Sites

Six commenters expressed concern that the proposed rule did not allow school sites to participate in the SFSP during unanticipated school closures. In general, respondents believe that schools are accessible to the community at large and, a uniform prohibition on using those sites as feeding sites during all emergency situations might deny eligible children SFSP meals when they most need them.

Although we agree that school buildings are sometimes the most capable and logical feeding sites (*e.g.,* during a natural disaster), Pub. L. 103–448 explicitly excludes school sites from participating in these situations. Therefore, this final rule retains the provision as set forth in the proposed rule. We recommend that local areas that encounter unanticipated school closures in which a school feeding site is the only viable option, should contact their State agency to find acceptable alternatives, or to explore the possibility of requesting a waiver of this provision from the Department under section 12(l) of the NSLA (42 U.S.C. 1760(l)). We will consider these requests on a case-by-case basis. We do not anticipate granting waivers in situations of unanticipated school closures involving labor-management disputes at school sites unless the safety of the children being fed at the site can be insured. Under this rule, school food authorities that meet the sponsor eligibility requirements may serve as sponsors during unanticipated school closures.

Sponsor Applications

We received one comment expressing concern about allowing experienced sponsors to participate in the Program without a current year application. The commenter indicated that sponsor information can change significantly from year to year, and recommended that we retain the application requirements found in the current regulations. State agencies that have concerns about the accuracy of the information they already have on file can choose to require that sponsors complete a new application in these circumstances. However, we believe the need to begin program operations quickly in these situations usually outweighs the need for collecting new application information from sponsors who have participated in the Program within the last three years. Accordingly, this final rule retains the streamlined application provision for experienced sponsors seeking to operate the Program during unanticipated school closures. This provision is set forth in § § 225.6(c)(1) and 225.14(a) of this final rule.

Year-Round Sites

One commenter expressed concern that the provisions for unanticipated school closures do not include year-round, or continuous school calendar, SFSP sponsors. The commenter was concerned that the type of unanticipated school closures discussed in Pub. L. 103–448 and the proposed rule could occur at *any* time of the year, not just during October through April. We agree with the commenter, and do not believe the law intended to exclude sponsors in year-round school communities from being able to provide SFSP meal service during unanticipated school closures.

Accordingly, this final rule adds language clarifying that the unanticipated school closure provisions of the regulations apply to areas operating under a continuous school calendar system. In these areas, this authority is not restricted to closures that occur during the months of October through April, but rather is available at any time of the year. These revisions appear in this final rule in § § 225.6(b)(1); 225.6(b)(4); 225.6(c)(1); 225.6(c)(2)(i)(G); 225.6(c)(3)(i)(B); 225.7(a); 225.7(d)(1)(i); 225.14(a); and 225.15(d)(1).

Other Provisions/Clarifying Language

We received a few comments pertaining to the meaning of ‘‘current year or prior two calendar years’’ in describing those sponsors who are exempt from application and other requirements during unanticipated school closures. One commenter suggested an editorial change to be more specific with our intent of prior participation in the Program at any time within three years. Therefore, we are amending the language of the final rule to read ‘‘current year or in either of the prior two calendar years.’’ These changes are contained in §§ 225.6(b)(4); 225.6(c)(1); 225.6(c)(2)(i)(G); 225.6(c)(3)(i)(B); and 225.14(a) of this final rule.

We received no comments on the remaining provisions of the proposed rule on operation of the SFSP during unanticipated school closures. Accordingly, this final rule retains these provisions as set forth in the proposed rule. These provisions are contained in this final rule at §§ 225.6(c)(2)(i)(G) and 225.6(c)(3)(i)(B) (documentation of site eligibility); § 225.7(d)(1)(i) (pre-approval visits by State agencies); and § § 225.7(a) and 225.15(d) (training by State agencies and sponsors).

B. Paperwork Reduction

Proposed Rule Provisions

The proposed rule took the minimum application requirements for SFSP sponsors and sites found in current § 225.6(c)(2) and reorganized and substantially revised them. The proposed rule established separate minimum requirements for: (1) New sponsors and sites, and those with significant operational problems in the prior year; and (2) experienced sponsors and sites. In the proposed rule, paragraph (c)(2) contained the requirements for new sponsors/sites and sponsors/sites with significant operational problems, and paragraph (c)(3) contained the requirements for experienced sponsors/sites. The application requirements were grouped and discussed in the preamble to the proposed rule as general requirements that apply to all types of sponsors and sites and requirements that are specific to certain types of sites, such as open sites, enrolled sites, migrant sites, and homeless sites.

In light of this new structure, and to help clarify application requirements for sponsors and sites with varying degrees of experience and/or success in operating the Program, new definitions were included in the proposed rule in § 225.2 for ‘‘new sponsor,’’ ‘‘new site,’’ ‘‘experienced sponsor,’’ and ‘‘experienced site.’’ The proposed rule eliminated duplicative and unnecessary requirements for experienced sponsors, with the intent of reducing the paperwork associated with the application process for these sponsors.

The proposed rule also contained new definitions of ‘‘open site,’’ ‘‘closed enrolled site,’’ and ‘‘open enrolled site.’’ These definitions were used in setting forth the application requirements, and included in the rule to clarify how each type of Program site demonstrates eligibility.

Comments Received and Final Rule Provisions

We received a total of 17 comments in the area of Paperwork Reduction. In general, commenters were supportive of the changes to the Program outlined in the proposed rule with only minor modifications needed. The concerns of commenters and a discussion of these concerns are provided below.

General Comments

A few commenters expressed concern that paperwork is not reduced under the proposed rule, but rather increased as State agencies will need to keep separate records for experienced and new sponsors. In addition, several commenters expressed concern that the integrity of SFSP may be compromised if we do not require all information currently required of SFSP sponsors on an annual basis, as information can change significantly from year to year for experienced sponsors.

In response to these comments, we do not anticipate an increase in administrative burden once the changes are implemented. As with any new system, it may take additional time to create a system that appropriately determines and tracks new sponsors, sponsors with significant operational problems, and experienced sponsors. However, there is flexibility in how a State agency implements these provisions. As we indicated in the preamble to the proposed rule, the requirements set forth in the regulations are *minimum* requirements. State agencies may include other provisions in their applications as long as they do not establish additional requirements for SFSP participation.

State Agency Classification of Sponsors

We also received several comments in the area of State agency classification of sponsors. Commenters suggested that we provide State agencies with guidelines for categorizing sponsors as having significant staff turnover or significant operational problems. We do not believe it is necessary nor prudent to include specific guidelines for making sponsor classifications in the final rule. We prefer to leave this discretion to State agencies to make assessments on a case-by-case basis. In making these classifications, State agencies should consider the deficiencies, if any, noted in monitoring visits, reports that have been received about the sponsor or any of its sites, and whether staff in key positions have changed.

Commenters also indicated that sponsors who experience significant operational problems should be required to attend more training or should be monitored more frequently by the State agency, not merely be required to submit more paperwork or information to the State agency. We believe providing additional training and monitoring for sponsors with operational problems is important, and encourage State agencies to do so. However, we also believe there is value in having these sponsors fully document their plans for administering the Program through the application process. This documentation helps ensure that they have a thorough understanding of Program requirements and responsibilities.

Definitions

One commenter recommended including in the definition of experienced sponsor, a requirement that the sponsor had to have successfully completed an application to participate in the Program in the prior year. We do not believe this change is necessary. We believe the fact that a sponsor is experienced clearly implies that the organization must have successfully completed an application. Therefore, we are not including the commenter's recommendation in the final rule.

Another commenter proposed eliminating the word ''successful'' from ''successful participation'' as a criterion to be classified as an experienced sponsor. We agree that the term ''successful'' is a subjective term. However, we believe it conveys the appropriate meaning. Therefore, we are retaining it in the definition of experienced sponsor in § 225.2 of the final rule.

We received one comment requesting that the reference to using data ''from other appropriate sources'' found in paragraph (a)(3) of the definition of ''areas in which poor economic conditions exist'' in § 225.2 needs to be better defined. As mentioned in the proposed rule, to determine if a site is located in a low-income area, State agencies should first consult school data to determine if the site meets the criteria that 50 percent or more of children are eligible for free or reduced-price meals. Census data may be used to determine site eligibility in certain circumstances where it is more representative of an area's socioeconomic status than school data. If neither school nor census data indicates that a site is area eligible but ''other'' data sources do, State agencies must consult with FNS to assess the appropriateness of that data as an indicator of an area's socioeconomic status. Though it is used rarely, for these unique situations, we believe it is important to retain the language ''from other appropriate sources'' in the final rule as it provides some flexibility in determining if a source provides substantial evidence of being a low-income area.

We received several comments on the proposed rule's definitions of ''open site,'' ''closed enrolled site,'' and ''open enrolled site.'' Commenters were concerned that the terminology would lead to confusion regarding the required documentation of eligibility for the different types of sites, especially in the case of the term ''open enrolled site.''

The proposed rule defined an ''open site'' as ''a site at which meals are made available to all children in the area and which is located in an area in which at least 50 percent of the children are from households that would be eligible for free or reduced price school meals under the National School Lunch Program and the School Breakfast Program, as determined in accordance with paragraph (a) of the definition of Areas in which poor economic conditions exist.'' Open sites document their eligibility on the basis of area data showing that at least 50 percent of the children from the area are from households with incomes at or below 185 percent of poverty.

An ''open enrolled site'' was defined as ''an enrolled site which is initially open to broad community participation, but at which the sponsor limits attendance for reasons of security, safety, or control. Site eligibility for an open enrolled site shall be documented in accordance with paragraph (a) of the definition of Areas in which poor economic conditions exist.'' For an open enrolled site, site eligibility is documented using area eligibility information, the same way that eligibility is documented for an open site.

The proposed rule defined a closed enrolled site as ''a site which is open only to enrolled children, as opposed to the community at large, and in which at least 50 percent of the enrolled children at the site are eligible for free or reduced-price school meals under the National School Lunch Program and the School Breakfast Program, as determined by approval of applications in accordance with § 225.15(f) of this part.'' Thus, in contrast to open and open enrolled sites, a closed enrolled site documents its eligibility on the basis of applications from individual children that are enrolled at the site.

We agree with commenters that the term ''open enrolled site'' could lead a reader to believe that the site's eligibility is linked to the income eligibility of individual children rather than the overall socioeconomic status of the area. Based on comments, we are changing the term ''open enrolled site'' in this final rule to ''restricted open site.'' (The wording of the definition remains the same.) We believe ''restricted open site'' more accurately conveys the way that these sites must document eligibility. The definitions of ''open site,'' ''closed enrolled site,'' and ''restricted open site'' are in § 225.2 of this final rule.

Site Eligibility Documentation

One commenter recommended allowing eligibility documentation for open and open enrolled (now ''restricted open'') sites to be collected every five years, instead of the three years set forth in the proposed rule, because a site's economic status does not change significantly in a five year time period. We agree that, in most cases, an area's overall economic status does not change rapidly. However, we are retaining the three year cycle for determining a site as area eligible when school data is used in § 225.6(c)(3)(i)(B), as we believe this timeframe provides the appropriate balance between paperwork reduction and Program accountability.

Homeless Feeding Sites

The requirements for new sponsors and sponsors with significant operational problems applying to participate in the Program at homeless feeding sites were contained in § 225.6(c)(2)(i)(L) of the proposed rule. We did not receive any comments on the provisions relating to homeless feeding sites. However, minor changes have been made to the requirements for homeless feeding sites, since these sites are no longer eligible to participate in SFSP solely on the basis of being homeless sites. Section 107(j)(2)(A) of the Child Nutrition Reauthorization Act of 1998 (Pub. L. 105–336) amended Section 13(a)(3)(C) of the NSLA (42 U.S.C. 1761 (a)(3)(C)) to remove the special eligibility provisions for homeless feeding sites in SFSP, and authorized their participation in the Child and Adult Care Food Program, effective July 1, 1999. To continue to participate in SFSP, homeless sites must qualify as open or enrolled sites. Therefore, this final rule removes the requirement in proposed § 225.6(c)(2)(i)(L) that site information sheets for homeless sites contain certification that the site's primary purpose is to provide shelter and one or more meal services per day to homeless families, since this information is no longer necessary in determining a homeless site's eligibility to participate in SFSP.

Budgets

One commenter stated that experienced sponsors should not be required to continue to submit administrative budgets to the State agency, as these budgets are not an accurate indicator of what a sponsor needs to financially administer the Program because sponsors tend to add and drop sites during the course of the year. The commenter also stated that experienced sponsors usually have a good understanding of the ''lesser of cost versus rate'' concept and can effectively use this to project their finances for the Program. According to the April 14, 1994, FNS instruction, 796–4, Revision 4, the ''lesser of cost versus rate'' concept means payments made to SFSP sponsors for their operating costs should equal the lesser of: (1) the actual operating costs incurred by the sponsor, or (2) the sum of the amounts derived by multiplying the number of meals, by type, that are served to participating children at the current reimbursement rates. This concept is also outlined in § 225.9(d)(6)(i) and (ii) of the SFSP regulations.

As mentioned in the proposed rule, updating and submitting administrative and operating budgets to the State agency is an important process as it ensures that Federal funds are properly spent. Additionally, this process helps sponsors determine whether their planned expenditures will be adequately funded under the SFSP's ''lesser of costs versus rates'' funding formula. We continue to believe this is important information to be submitted on an annual basis to the State agency. Therefore, we are retaining the requirement for experienced sponsors in § 225.6(c)(3)(ii)(B). (The requirement is found in § 225.6(c)(2)(ii)(B) of this final rule for new sponsors and sponsors with significant operational problems.)

Other Comments/Summary of Provisions

We did not receive any comments on the remaining provisions of the proposed rule on sponsor and site application requirements. The following chart outlines the sponsor and site application requirements for new sponsors/sponsors with significant operational problems, and for experienced sponsors. Changes based on public comments received, as discussed above, have been incorporated in the final rule.

Requirement	New sponsors/sites and sponsors/sites with significant operational problems	Experienced sponsors/sites
Site Information Sheet:		
Organized and supervised system for serving meals to children.	§ 225.6(c)(2)(i)(A)	N/A.
Estimated number and types of meals to be served and times of service.	§ 225.6(c)(2)(i)(B)	§ 225.6(c)(3)(i)(A).
Arrangements for delivery and holding of meals and storing leftovers for next day meal service.	§ 225.6(c)(2)(i)(C)	N/A.
Arrangements for food service during periods of inclement weather.	§ 225.6(c)(2)(i)(D)	N/A.
Access to means of communication for making necessary adjustments for number of meals to be served at each site.	§ 225.6(c)(2)(i)(E)	N/A.
Whether the site is rural or non-rural and whether the site's food service will be self-prepared or vended.	§ 225.6(c)(2)(i)(F)	N/A.
Open sites and restricted open sites: documentation supporting area eligibility determination.	§ 225.6(c)(2)(i)(G)	§ 225.6(c)(3)(i)(B). Documentation must be submitted every three years if school data is used, or earlier if requested by the State agency. If census data is used, documentation must be submitted when new census data becomes available.
Closed enrolled sites: the projected number of children enrolled and projected number of children eligible for f/rp meals for each site.	§ 225.6(c)(2)(i)(H)	§ 225.6(c)(3)(i)(C).
NYSP sites: certification from sponsor that all children who will receive SFSP meals are enrolled participants in NYSP.	§ 225.6(c)(2)(i)(I)	N/A.
Camps: number of children enrolled in each session who meet Program income standards.	§ 225.6(c)(2)(i)(J)	§ 225.6(c)(3)(i)(D).
Migrant sites: certification from migrant organization that site serves children of migrant worker families. If site also serves non-migrant children, sponsor must certify that the site primarily serves migrant children.	§ 225.6(c)(2)(i)(K)	N/A.
Homeless feeding sites: information that demonstrates that site is not a residential child care institution; description of method used to ensure that no cash payments or other in-kind services are used for meal service; certification that site only claims meals served to children.	§ 225.6(c)(2)(i)(L)	N/A.
Other Application Requirements:		
Information that demonstrates that applicant meets requirements in § 225.14; extent of Program payments needed including advance and start-up payments (if applicable); staffing and monitoring plan.	§ 225.6(c)(2)(ii)(A)	§ 225.6(c)(3)(ii)(A).
Complete administrative and operating budget which includes projected administrative expenses and information of how sponsor will operate the Program within estimated reimbursement.	§ 225.6(c)(2)(ii)(B)	§ 225.6(c)(3)(ii)(B).

Requirement	New sponsors/sites and sponsors/sites with significant operational problems	Experienced sponsors/sites
Summary of how meals will be obtained; if invitation for bid is required, sponsors must submit a schedule for bid dates and a copy of their IFB.	§ 225.6(c)(2)(ii)(C)	§ 225.6(c)(3)(ii)(C). If IFB is required, sponsors must submit schedule for bid dates and copy of IFB if a change has occurred from previous year. If method for procuring meals has changed from previous year, sponsors must submit a summary of how meals will be obtained.
For sponsors seeking approval as unit of local, municipal, county or State government, certification that it will directly operate the Program in accordance with § 225.14(d)(3).	§ 225.6(c)(2)(ii)(D)	N/A.

C. Targeted State Monitoring

General Discussion

State agency monitoring of SFSP sponsors and sites is critically important as it serves as a tool for effective Program management and ensures that quality meals are being served to eligible children. However, we believe that the current State agency monitoring requirements do not always allow State agencies enough flexibility to determine where to focus their monitoring resources. Provisions in the proposed rule allowed State agencies to target their review efforts to new sponsors and those sponsors determined by the State agency to need follow-up monitoring. In response to public comments, this final rule revises some of the monitoring requirements contained in the proposed rule to allow State agencies to more effectively focus their monitoring efforts on those sponsors/sites which are new, operationally deficient, or demonstrate the greatest potential to be deficient in their operations.

Proposed Rule Provisions

Pre-approval Visits

The proposed rule retained the current provisions, found in § 225.7(d)(1)(i) and (ii), for State agencies to conduct pre-approval visits of *sponsors.* These provisions require State agencies to:

- Conduct pre-approval visits for all applicant sponsors which did not participate in the Program in the prior year;
- Conduct optional pre-approval visits for new applicant school food authority sponsors which have been reviewed by the State agency under the NSLP during the preceding 12 months and had no significant deficiencies; and
- Conduct pre-approval visits for sponsors identified by the State agency as needing pre-operational visits as a result of operational problems in the prior year.

The proposed rule removed the specific requirements for State agencies to conduct pre-approval visits for certain large sites and sites operated by private nonprofit sponsors, and made all State agency pre-approval visits to *sites* discretionary. This provision was contained in § 225.7(d)(1)(iii) of the proposed rule.

Sponsor and Site Reviews

The proposed rule required that, at any time during the Program year, State agencies were required to conduct annual reviews of sponsor operations and review at least 10 percent of the sponsor's sites or one site, whichever number was greater, for:

- Every new sponsor at least once during its first year of operation;
- Every sponsor which, in the determination of the State agency, experienced significant problems in the prior year; and
- Every sponsor with 20 or more sites.

Under the proposed rule, all sponsors were to be reviewed at least once every 3 years. In addition, sponsors with large sites, larger numbers of sites, or significant operational problems in the prior year were required to be reviewed earlier. The recommendation was also made that State agencies prioritize their review efforts to target all other sponsors which increase their total number of sites by five or more, or whose participation increased substantially, from one year to the next.

Finally, the proposed rule eliminated the special requirements for State agency review of private nonprofit organizations found in § 225.7(d)(2)(i)(A), and removed the review requirement for academic-year NYSP sites, since the NSLA no longer authorizes these sites to participate in SFSP.

As indicated in the preamble of the proposed rule, the proposed changes were not intended to result in a reduction in a State agency's monitoring efforts. Rather, it was intended that the State agency's monitoring resources would become more targeted to reviews of new sponsors and sponsors of over 20 sites, and other sponsors that the State agency identifies, and that a correspondingly greater amount of State agency time and effort could be spent in conducting such reviews. We expected each State's level of resources devoted to SFSP monitoring to remain the same.

Comments Received and Final Rule Provisions

We received 3 comments pertaining to sponsor and site reviews. One commenter suggested removing the reference to having State agencies target sponsors that have increased their sites by 5 or more, indicating that recommendations such as this are better placed in guidance material. Two commenters expressed concern that the net result of the proposed monitoring requirements could result in significant reductions in the monitoring efforts put forth by State agencies.

As a result of these comments, we are revising the State agency monitoring requirements in this final rule. We are removing the proposed requirements that the State agency annually review every sponsor with 20 or more sites, and that State agencies prioritize their review efforts to target all other sponsors which increase their total number of sites by five or more, or whose participation increases substantially, from one year to the next.

Instead, State agencies will be required to annually review a number of sponsors whose Program reimbursements, in the aggregate, accounted for at least one-half of the total Program meal reimbursements in the State in the prior year. We believe that the three-year review cycle, coupled with the elimination of the current detailed and prescriptive review requirements, will provide State agencies the flexibility they need to properly oversee Program operations. The requirement to annually review sponsors with claims totaling one-half of Program reimbursements in the prior year ensure that State agencies focus on the largest sponsors. To improve Program management, we are considering similar changes in the State agency monitoring requirements for the Child and Adult Care Food Program.

Accordingly, under this final rule, State agencies are required to conduct annual reviews of sponsor operations and review at least 10 percent of the sponsor's sites or one site, whichever number is greater, for:

- Every new sponsor at least once during its first year of operation;
- Every sponsor which, in the determination of the State agency, experienced significant problems in the prior year; and
- A number of sponsors whose Program reimbursements, in the aggregate, accounted for at least one-half of the total Program meal reimbursements in the State in the prior year.

In addition, State agencies must review every sponsor at least once every 3 years. Sponsors with large numbers of sites, or a site(s) with a large number of children attending, should be reviewed earlier. These provisions are contained in § 225.7(d)(2) of this final rule.

D. Procedural Matters

Executive Order 12866

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

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, requires 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, the Food and Nutrition Service 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, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Summer Food Service Program is listed in the Catalog of Federal Domestic Assistance under No. 10.559. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related notices (48 FR 29114 and 49 FR 2276), this program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Samuel Chambers, Jr., Administrator of the Food and Nutrition Service (FNS), has certified that this rule will not have a significant economic impact on a substantial number of small entities. Simplifying and streamlining the administration of the SFSP is the intended effect of this rule when implemented.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Dates'' section of the preamble of the rule. Prior to any judicial challenge to the provisions of this rule or the applications of its provisions, all applicable administrative procedures must be exhausted. This includes any administrative procedures available through State or local governments. SFSP administrative procedures are set forth at: (1) 7 CFR 225.13, which outlines appeals procedures for use by a sponsor or a food service management company; and (2) 7 CFR 225.17 and 7 CFR part 3015, which address administrative appeal procedures for disputes involving procurement by State agencies and sponsors.

Paperwork Reduction Act

This final rule seeks to reduce the reporting and recordkeeping requirements for State agencies administering the SFSP. In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the reporting requirements included in this final rule were reviewed by the Office of Management and Budget (OMB). OMB approved these requirements for 7 CFR Part 225 under OMB number 0584–0280.

List of Subjects in 7 CFR Part 225

Food and Nutrition Service, Food assistance programs, Grant programs-health, Infants and children, Labeling, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 225 is amended as follows:

PART 225—SUMMER FOOD SERVICE PROGRAM

1. The authority citation for part 225 continues to read as follows:

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761, and 1762a).

2. In § 225.2:

a. New definitions of *Closed enrolled site, Experienced site, Experienced sponsor, New site, New sponsor, Open site,* and *Restricted open site* are added in alphabetical order; and

b. The definition of *Areas in which poor economic conditions exist* is revised. The additions and revision read as follows:

§ 225.2 Definitions.

* * * * *

Areas in which poor economic conditions exist means:

(a) The local areas from which an open site and restricted open site draw their attendance in which at least 50 percent of the children are eligible for free or reduced-price school meals under the National School Lunch Program and the School Breakfast Program, as determined:

(1) By information provided from departments of welfare and education, zoning commissions, census tracts, and organizations determined by the State agency to be migrant organizations;

(2) By the number of free and reduced-price lunches or breakfasts served to children attending public and nonprofit private schools located in the areas of Program sites; or

(3) From other appropriate sources; or

(b) A closed enrolled site.

* * * * *

Closed enrolled site means a site which is open only to enrolled children, as opposed to the community at large, and in which at least 50 percent of the enrolled children at the site are eligible for free or reduced price school meals under the National School Lunch Program and the School Breakfast Program, as determined by approval of applications in accordance with § 225.15(f).

* * * * *

Experienced site means a site which, as determined by the State agency, has successfully participated in the Program in the prior year.

Experienced sponsor means a sponsor which, as determined by the State agency, has successfully participated in the Program in the prior year.

* * * * *

New site means a site which did not participate in the Program in the prior year, or, as determined by the State agency, a site which has experienced significant staff turnover from the prior year.

New sponsor means a sponsor which did not participate in the Program in the prior year, or, as determined by the State agency, a sponsor which has experienced significant staff turnover from the prior year.

* * * * *

Open site means a site at which meals are made available to all children in the area and which is located in an area in which at least 50 percent of the children are from households that would be eligible for free or reduced price school meals under the National School Lunch Program and the School Breakfast Program, as determined in accordance with paragraph (a) of the definition of *Areas in which poor economic conditions exist.*

* * * * *

Restricted open site means a site which is initially open to broad community participation, but at which the sponsor restricts or limits attendance for reasons of security, safety or control. Site eligibility for a restricted open site shall be documented in accordance with paragraph (a) of the definition of *Areas in which poor economic conditions exist.*

* * * * *

3. In § 225.6:

a. Paragraph (b)(1) is amended by adding a new sentence at the end;

b. Paragraph (b)(4) is revised;

c. Paragraph (c)(1) is revised;

d. Paragraph (c)(2) is revised;

e. Paragraphs (c)(3) and (c)(4) are redesignated as paragraphs (c)(4) and (c)(5), respectively, and a new paragraph (c)(3) is added;

f. Newly redesignated paragraph (c)(4) is amended by adding a heading and by removing paragraph (c)(4) introductory text and adding it as the first sentence in newly redesignated paragraph (c)(4)(i); the paragraph is further amended by removing the reference to ''(c)(4)'' in paragraph (c)(4)(ii)(D) and adding in its place a reference to ''(c)(5)''.

g. Newly redesignated paragraph (c)(5) is amended by adding a heading;

h. Paragraph (d)(1)(ii) is amended by removing the word ''and'' at the end of the paragraph;

i. Paragraph (d)(1)(iii) is amended by removing the period at the end of the paragraph and adding in its place the word ''; and'';

j. A new paragraph (d)(1)(iv) is added; and

k. Paragraph (e)(1) is revised.

The additions and revisions read as follows:

§ 225.6 State agency responsibilities.

* * * * *

(b) * * *

(1) * * * Sponsors applying for participation in the Program due to an unanticipated school closure during the period from October through April (or at any time of the year in an area with a continuous school calendar) shall be exempt from the application submission deadline.

* * * * *

(4) The State agency shall determine the eligibility of sponsors applying for participation in the Program in accordance with the applicant sponsor eligibility criteria outlined in § 225.14. However, State agencies may approve the application of an otherwise eligible applicant sponsor which does not provide a year-round service to the community which it proposes to serve under the Program only if it meets one or more of the following criteria: It is a residential camp; it proposes to provide a food service for the children of migrant workers; a failure to do so would deny the Program to an area in which poor economic conditions exist; a significant number of needy children will not otherwise have reasonable access to the Program; or it proposes to serve an area affected by an unanticipated school closure during the period from October through April (or at any time of the year in an area with a continuous school calendar). In addition, the State agency may approve a sponsor for participation during an unanticipated school closure without a prior application if the sponsor participated in the program at any time during the current year or in either of the prior two calendar years.

* * * * *

(c) * * *

(1) *Application forms.* The applicant shall submit a written application to the State agency for participation in the Program as a sponsor. Sponsors proposing to serve an area affected by an unanticipated school closure during the period from October through April (or at any time of the year in an area with a continuous school calendar) may be exempt, at the discretion of the State agency, from submitting a new application if they have participated in the program at any time during the current year or in either of the prior two calendar years. The State agency may use the application form developed by FNS, or it may develop an application form, for use in the Program. Application shall be made on a timely basis in accordance with the deadline date established under § 225.6(b)(1).

(2) *Requirements for new sponsors, new sites, and, as determined by the State agency, sponsors and sites which have experienced significant operational problems in the prior year.*—(i) *Site information sheets.* At a minimum, the application submitted by new sponsors and by sponsors which, in the determination of the State agency, have experienced significant operational problems in the prior year shall include a site information sheet, as developed by the State agency, for each site where a food service operation is proposed. The site information sheet for new sponsors and new sites, and for sponsors and sites which, in the determination of the State agency, have experienced significant operational problems in the current year must demonstrate or describe the following:

(A) An organized and supervised system for serving meals to attending children;

(B) The estimated number and types of meals to be served and the times of service;

(C) Arrangements, within standards prescribed by the State or local health authorities, for delivery and holding of meals until time of service, and arrangements for storing and refrigerating any leftover meals until the next day;

(D) Arrangements for food service during periods of inclement weather;

(E) Access to a means of communication for making necessary adjustments in the number of meals delivered in accordance with the number of children attending daily at each site;

(F) Whether the site is rural, as defined in § 225.2, or non-rural, and whether the site's food service will be self-prepared or vended;

(G) For open sites and restricted open sites, documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist. However, for sites that a sponsor proposes to serve during an unanticipated school closure during the period from October through April (or at any time of the year in an area with a continuous school calendar), any site which has participated in the Program at any time during the current year or in either of the prior two calendar years shall be considered eligible without new documentation;

(H) For closed enrolled sites, the projected number of children enrolled and the projected number of children eligible for free and reduced price meals for each of these sites;

(I) For NYSP sites, certification from the sponsor that all of the children who will receive Program meals are enrolled participants in the NYSP;

(J) For camps, the number of children enrolled in each session who meet the Program's income standards. If such information is not available at the time of application, it shall be submitted as soon as possible thereafter and in no case later than the filing of the camp's claim for reimbursement for each session;

(K) For those sites at which applicants will serve children of migrant workers, certification from a migrant organization which attests that the site serves children of migrant worker families. If the site also serves non-migrant children, the sponsor shall certify that the site predominantly serves migrant children; and

(L) For a site that serves homeless children, information sufficient to demonstrate that the site is not a residential child care institution, as defined in paragraph (c) of the definition of *school* in § 210.2 of this chapter. If cash payments, food stamps, or any in-kind service are required of any meal recipient at these sites, sponsors must describe the method(s) used to ensure that no such payments or services are received for any Program meal served to children. In addition, sponsors must certify that such sites employ meal counting methods which ensure that reimbursement is claimed only for meals served to children.

(ii) *Other application requirements.* New sponsors and sponsors which in the determination of the State agency have experienced significant operational problems in the prior year shall also include in their applications:

(A) Information in sufficient detail to enable the State agency to determine whether the applicant meets the criteria for participation in the Program as set forth in § 225.14; the extent of Program payments needed, including a request for advance payments and start-up payments, if applicable; and a staffing and monitoring plan;

(B) A complete administrative and operating budget for State agency review and approval. The administrative budget shall contain the projected administrative expenses which a sponsor expects to incur during the operation of the Program, and shall include information in sufficient detail to enable the State agency to assess the sponsor's ability to operate the Program within its estimated reimbursement. A sponsor's approved administrative budget shall be subject to subsequent review by the State agency for adjustments in projected administrative costs;

(C) A summary of how meals will be obtained (e.g., self-prepared at each site, self-prepared and distributed from a central kitchen, purchased from a school food authority, competitively procured from a food service management company, etc.). If an invitation for bid is required under § 225.15(g), sponsors shall also submit a schedule for bid dates, and a copy of their invitation for bid; and

(D) For each applicant which seeks approval under § 225.14(b)(3) as a unit of local, municipal, county or State government, or under § 225.14(b)(5) as a private nonprofit organization, certification that it will directly operate the Program in accordance with § 225.14(d)(3).

(3) *Requirements for experienced sponsors and experienced sites.*—(i) *Site information sheets.* At a minimum, the application submitted by experienced sponsors shall include a site information sheet, as developed by the State agency, for each site where a food service operation is proposed. The site information sheet for experienced sponsors and experienced sites must demonstrate or describe the information below. The State agency also may require experienced sponsors and experienced sites to provide any of the information required in paragraph (c)(2) of this section.

(A) The estimated number and types of meals to be served and the times of service;

(B) For open sites and restricted open sites, new documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist shall be submitted. Such documentation shall be submitted every three years when school data are used. When census data are used, such documentation shall be submitted when new census data are available, or earlier if the State agency believes that an area's socioeconomic status has changed significantly since the last census. For sites that a sponsor proposes to serve during an unanticipated school closure during the period from October through April (or at any time of the year in an area with a continuous school calendar), any site which has participated in the Program at any time during the current year or in either of the prior two calendar years shall be considered eligible without new documentation of serving an area in which poor economic conditions exist;

(C) For closed enrolled sites, the projected number of children enrolled and the projected number of children eligible for free and reduced price school meals for each of these sites; and

(D) For camps, the number of children enrolled in each session who meet the Program's income standards. If such information is not available at the time of application, it shall be submitted as soon as possible thereafter and in no case later than the filing of the camp's claim for reimbursement for each session.

(ii) *Other application requirements.* Experienced sponsors shall also include on their applications:

(A) The extent of Program payments needed, including a request for advance payments and start-up payments, if applicable, and a staffing and monitoring plan;

(B) A complete administrative and operating budget for State agency review and approval. The administrative budget shall contain the projected administrative expenses which a sponsor expects to incur during the operation of the Program, and shall include information in sufficient detail to enable the State agency to assess the sponsor's ability to operate the Program within its estimated reimbursement. A sponsor's approved administrative budget shall be subject to subsequent review by the State agency for adjustments in projected administrative costs; and

(C) If an invitation for bid is required under § 225.15(g), a schedule for bid dates. Sponsors shall also submit a copy of the invitation for bid if it is changed from the previous year. If the method of procuring meals is changed, sponsors shall submit a summary of how meals will be obtained (e.g., self-prepared at each site, self-prepared and distributed from a central kitchen, purchased from a school food authority, competitively procured from a food service management company, etc.).

(4) *Free meal policy statement.* * * *

* * * * *

(5) *Hearing procedures statement.* * * *

* * * * *

(d) * * *

(1) * * *

(iv) If it is a site proposed to operate during an unanticipated school closure, it is a non-school site.

* * * * *

(e) * * *

(1) Operate a nonprofit food service during the period specified, as follows:

(i) From May through September for children on school vacation;

(ii) At any time of the year, in the case of sponsors administering the Program under a continuous school calendar system; or

(iii) During the period from October through April, if it serves an area affected by an unanticipated school closure due to a natural disaster, major building repairs, court orders relating to school safety or other issues, labor-management disputes, or, when approved by the State agency, a similar cause.

* * * * *

4. In § 225.7:

a. Paragraph (a) is amended by adding a new sentence at the end;

b. Paragraph (d)(1)(i) is amended by removing the semicolon at the end of the paragraph, by adding a period in its place, and by adding a new sentence at the end of the paragraph;

c. Paragraph (d)(1)(iii) is revised;

d. Paragraph (d)(1)(iv) is removed; and

e. Paragraph (d)(2) is revised.

The additions and revisions read as follows:

§ 225.7 Program monitoring and assistance.

(a) * * * State agencies are not required to conduct this training for sponsors operating the Program during unanticipated school closures during the period from October through April (or at any time of the year in an area with a continuous school calendar).

* * * * *

(d) * * *

(1) * * *

(i) * * * In addition, pre-approval visits of sponsors proposing to operate the Program during unanticipated school closures during the period from October through April (or at any time of the year in an area with a continuous school calendar) may be conducted at the discretion of the State agency;

* * * * *

(iii) All sites which the State agency has determined need a pre-approval visit.

(2) *Sponsor and site reviews*—(i) *General.* The State agency must review sponsors and sites to ensure compliance with Program regulations, the Department's non-discrimination regulations (7 CFR part 15) and any other applicable instructions issued by the Department. In determining which sponsors and sites to review, the State agency must, at a minimum, consider the sponsors' and sites' previous participation in the Program, their current and previous Program performance, and the results of previous reviews of the sponsor and sites. When the same school food authority personnel administer this Program as well as the National School Lunch Program (7 CFR part 210), the State agency is not required to conduct a review of the Program in the same year in which the National School Lunch Program operations have been reviewed and determined to be satisfactory. Reviews shall be conducted as follows:

(ii) *Frequency and number of required reviews.* State agencies shall:

(A) Conduct a review of every new sponsor at least once during the first year of operation;

(B) Annually review a number of sponsors whose program reimbursements, in the aggregate, accounted for at least one-half of the total program meal reimbursements in the State in the prior year;

(C) Annually review every sponsor which experienced significant operational problems in the prior year;

(D) Review each sponsor at least once every three years; and

(E) As part of each sponsor review, conduct reviews of at least 10 percent of each sponsor's sites, or one site, whichever number is greater.

* * * * *

5. In § 225.14:

a. Paragraph (a) is amended by adding a new sentence at the end;

b. Paragraph (d)(1) is removed; and

c. Paragraphs (d)(2) through (d)(6) are redesignated as paragraphs (d)(1) through (d)(5), respectively.

The addition reads as follows:

§ 225.14 Requirements for sponsor participation.

(a) * * * Sponsors proposing to operate a site during an unanticipated school closure during the period from October through April (or at any time of the year in an area with a continuous school calendar) may be exempt, at the discretion of the State agency, from submitting a new application if they have participated in the program at any time during the current year or in either of the prior two calendar years.

* * * * *

6. In § 225.15, paragraph (d)(1) is amended by adding a new sentence after the first sentence to read as follows:

§ 225.15 Management responsibilities of sponsors.

* * * * *

(d) * * *

(1) * * * The State agency may waive these training requirements for operation of the Program during unanticipated school closures during the period from October through April (or at any time of the year in an area with a continuous school calendar).

* * *

* * * * *

Dated: December 15, 1999.

Samuel Chambers, Jr.,
Administrator.

[FR Doc. 99–33504 Filed 12–28–99; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 250 and 251

RIN 0584–AC49

Food Distribution Programs: Implementation of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends provisions of the Food Distribution Program regulations and the Emergency Food Assistance Program (TEFAP) regulations to implement certain provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, commonly known as Welfare Reform, while generally streamlining and clarifying these regulations. In accordance with the Welfare Reform legislation, the provisions contained in this rule address various changes required by the repeal of section 110 of the Hunger Prevention Act of 1988, which authorized the former Soup Kitchens/Food Banks Program, the former beneficiaries of which are now served by an expanded TEFAP. It amends the definitions relating to organizational eligibility in TEFAP to reflect the program consolidation, and to achieve consistency with the Emergency Food Assistance Act of 1983 as amended by Welfare Reform. Changes to these and other definitions also provide greater clarity to the regulations. As mandated by Welfare Reform, this rule also changes the required content and frequency of submission of the TEFAP State plan of operation, and encourages State agencies to create advisory boards comprised of public and private entities with an interest in the distribution of TEFAP commodities. In addition, this rule broadens the allowable uses of TEFAP administrative funds at the State and local levels, and provides greater flexibility for State agencies in meeting the TEFAP maintenance-of-effort

requirement. Finally, in order to reduce the paperwork burden and afford State agencies greater flexibility, this rule makes discretionary changes in TEFAP recordkeeping, monitoring, and reporting requirements.

EFFECTIVE DATE: This final rule is effective February 28, 2000.

FOR FURTHER INFORMATION CONTACT: Lillie Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 612, 4501 Ford Avenue, Alexandria, Virginia 22302, or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service (FNS) has certified that this action will not have a significant economic impact on a substantial number of small entities. The procedures in this rulemaking would primarily affect FNS regional offices, and the State distributing and recipient agencies that administer food distribution programs. Private enterprises that enter into agreements for the storage of donated food or meal service management would also be affected. While some of these entities constitute small entities, a substantial number will not be affected. Furthermore, any economic impact will not be significant.

Unfunded Mandate Reform Act

Title II of the Unfunded Mandate Reform Act of 1995, Pub. L. 104–4, (UMRA), 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, FNS 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 or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

These programs are listed in the Catalog of Federal Domestic Assistance under 10.550, 10.568 and 10.569 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, Subpart V and final rule-related notices published at 48 FR 29114, June 24, 1983 and 49 FR 22676, May 31, 1984).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the EFFECTIVE DATE section of the preamble. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Paperwork Reduction Act

The reporting and recordkeeping requirements included in 7 CFR parts 250 and 251 have been approved by the Office of Management and Budget under OMB No. 0584–0293.

Background

On July 8, 1999, the Department of Agriculture (hereinafter ‘‘USDA’’ or ‘‘Department’’) published a proposed rule in the **Federal Register** (64 FR 36978) to amend provisions of the Food Distribution Program regulations and the TEFAP regulations to reflect changes brought about in the administration of food distribution programs by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, (hereinafter ‘‘Welfare Reform’’). The rule also proposed changes which would clarify existing regulatory requirements and reduce the burden associated with the administration of TEFAP. The specific changes made by this rule were discussed in detail in the preamble to the proposed rule, which provided a 60-day comment period.

Analysis of Comments Received

The Department received a total of 14 comment letters. Comment letters were submitted by three State TEFAP agencies, one inter-church local food pantry, seven food banks on the city, regional, state and national levels, one national commodity distribution association, one State community action program association, and one local human resources council. The 14 commenters were generally enthusiastic in their support for the rule. Seven of them supported implementation of the proposed rule without change. Comments received are discussed in detail below. For a complete understanding of the provisions contained in this final rule, the reader should refer to the preamble of the proposed rule.

Definition of Eligible Recipient Agency

As discussed in the proposed rule, a definition of ‘‘eligible recipient agency’’ (ERA) as contained in section 251.3(d) of the proposed rule is not found in current regulations. This definition was included in the proposed rule to clarify the types of organizations eligible to receive TEFAP commodities and administrative funds, provided they meet all pertinent eligibility criteria. Three comments were received concerning the list of organizations identified in the definition of ERA under subparagraph (6).

One commenter expressed concern about the inclusion of ‘‘disaster relief programs’’ as a type of ERA. He said that if the new definition allows provision of food to such organizations on the same basis as other ERAs, *i.e.,* without USDA approval, then current regulations must be clarified. The definition of ERA contained in the Emergency Food Assistance Act of 1983 (EFAA) includes disaster relief programs as a type of ERA. Therefore, they were included in the proposed regulatory definition of ERA. However, as stated above, such organizations would be required to meet TEFAP eligibility criteria (i.e., if the organization provides commodities to households, it must administer a means test; if it uses TEFAP commodities to provide prepared meals, it must serve predominantly needy persons). This contrasts with the regulatory requirements governing the distribution of commodities to disaster organizations for use in providing assistance in Presidentially declared disasters and situations of distress as set forth in section 250.43 and section 250.44 respectively. Under sections 250.43 and 250.44, State agencies must obtain approval from USDA prior to making commodities available for distribution to households in disaster or emergency situations. Once approval is obtained, commodities from TEFAP (and other food distribution programs) can be made available to disaster organizations and distributed to disaster victims without regard to TEFAP eligibility requirements.

Another commenter recommended that the definition be revised to make summer camps and child nutrition programs which receive assistance through other Federal nutrition assistance programs ineligible for TEFAP commodities and administrative funds. As discussed in the proposed rule, Welfare Reform defines ERA to include summer camps for children and child nutrition programs. Therefore, the Department does not have the authority to categorically exclude such organizations from participation in the program.

The same commenter requested that the definition be revised to eliminate reference to the Nutrition Program for the Elderly (NPE), and add ''other nutrition projects that serve on-site or home-delivered meals to needy elderly people'' since sites participating in NPE receive Federal support from other sources. As discussed above, the list of organizations contained in the definition of ERA in the proposed rule reflects the organizations listed in the definition of ERA in the EFAA. The Department lacks the authority to exclude a clearly eligible organizational type from participation in the program. In addition, revising the definition in the manner suggested would not make ineligible those NPE sites that meet the eligibility criteria.

Another commenter requested that community action programs be specifically mentioned as a type of EFO, and noted that they were mentioned in the preamble of the proposed rule, but not in the regulatory text. Specific reference to community action programs was included in the preamble of the proposed rule as an example of the types of organizations that could be considered an EFO. However, such reference does not appear in the regulatory text because it is not included in the definition set forth in the EFAA. Furthermore, it would be impossible to identify all the different types of organizations that could be considered an EFO. This in no way, however, affects their eligibility to participate in the program.

We appreciate the recommendations made by the commenters. However, for the reasons described above, this final rule retains the definition of ERA as originally proposed.

Eligible Recipient Agency Eligibility Criteria

Section 251.5(a)(2) of the proposed rule would limit the eligibility of organizations providing prepared meals to those which serve ''predominantly needy'' persons. Two commenters, although enthusiastic supporters of implementation of the proposed rule without change, expressed concern about the ''new'' standard. They believe that the new standard will require additional monitoring to ensure that it does not restrict access of the needy to TEFAP. The EFAA requires that TEFAP commodities be used to provide assistance to those in need. Prior to Welfare Reform, TEFAP regulations (7 CFR part 251) only addressed the distribution of TEFAP commodities to households through organizations which impose a means test. With the consolidation of the Soup Kitchen/Food Bank Program (SK/FB) into TEFAP, it became necessary to establish requirements relative to the distribution of commodities to organizations which provide prepared meals to ensure that such organizations are providing nutrition assistance to the needy. Upon reviewing the provisions relative to the distribution of SK/FB commodities contained in section 250.52, it was determined that limiting participation of organizations that provide prepared meals to those that serve ''predominantly'' needy persons would meet the requirements of the EFAA. In addition, this limitation is no more stringent than the limitations that were placed on State agencies in the distribution of SK/FB commodities. Therefore, the Department does not expect needy persons to be adversely affected as a result of establishing this criterion for these types of organizations. Thus, this provision is retained in section 251.5(a)(2) as proposed.

Another commenter was concerned about the provision contained in section 251.5(a)(3)(iii) of the proposed rule which states that organizations ''organized or operated exclusively for religious purposes'' are automatically tax exempt under Internal Revenue Service (IRS) rules. The commenter expressed concern that States and ERAs may be unfamiliar with IRS rules, and asked if organizations would be allowed to simply self-declare that they meet this definition, or if they would be required to provide documentation. Under IRS rules, such organizations effectively self-declare their status, i.e., once having claimed the tax exemption, they are deemed to possess it unless successfully challenged by the IRS. Therefore, the rule did not propose to require State agencies to obtain documentation.

Some of the comments have led the Department to believe that the language of the proposed rule regarding eligibility of organizations for TEFAP is in need of further clarification. Section 251.2(c)(2) states that ''[p]rior to making donated foods or administrative funds available, State agencies must enter into a written agreement with eligible recipient agencies to which they plan to distribute donated foods and/or administrative funds. State agencies must ensure that eligible recipient agencies in turn enter into a written agreement with eligible recipient agencies to which they plan to distribute donated foods and/or administrative funds before donated foods or administrative funds are transferred between any two eligible recipient agencies.'' However, section 251.5(a) of the proposed rule speaks only in terms of commodities and does not mention administrative funds, leading to possible confusion. Therefore, section 251.5(a) of the proposed rule is revised to specifically include administrative funds.

Recipient Eligibility Criteria

One commenter recommended that the criteria for recipient eligibility under section 251.5(b) of the proposed rule be expanded to include ''needy persons in situations of emergency and distress due to disasters.'' As discussed in detail above, commodities are made available for distribution to households in disasters and situations of emergency and distress in accordance with the provisions contained in sections 250.43 and 250.44. These provisions permit TEFAP commodities to be distributed to households without regard to income only after proper authorization has been obtained.

Two commenters recommended that section 251.5(b)(2), which requires the use of income-based standards in determining a household's eligibility to receive TEFAP commodities, be removed and replaced with language that would permit the use of non-income-based eligibility criteria. The EFAA does not explicitly require income-based standards to be met by TEFAP recipients. However, TEFAP regulations have always required the use of such criteria. This requirement is necessary in order to ensure that only those households in need of assistance receive commodities. In addition, it is consistent with eligibility requirements for other nutrition assistance programs, as well as other types of Federal assistance, such as the Temporary Assistance to Needy Families Program.

Reduction in Administrative Burden (State Agreements with Eligible Recipient Agencies and TEFAP State Distribution Plan)

Several commenters expressed interest in reductions in administrative burdens beyond those set forth in the proposed rule. The Department believes it has come close to the proper balance between reduced administrative burden and sufficient program accountability. However, in reviewing the provisions contained in the proposed rule, it has been determined that the administrative burden can be further reduced by making minor changes in the following requirements. Section 251.2(d)(1)(iii) of the proposed rule would require the agreement to include ''the name of the person responsible for administering the program in the receiving eligible recipient agency.'' With the move to permanent agreements, it is prudent to avoid requiring information that could change frequently. Therefore, the final rule is revised to remove subparagraph (iii) in section 251.2(d)(1) of the proposed rule.

Section 251.6(a)(1) of the proposed rule would require State agencies to include ''[a] designation of the State agency responsible for distributing commodities and administrative funds provided under this part, the address of such agency, and the name of the agency official entrusted with binding signature authority'' in their distribution plan. Under Welfare Reform, TEFAP State plans are to be submitted every four years instead of annually, which was the previous regulatory requirement. Thus, while TEFAP State plans do not have the potential to be permanent, as do State agreements with ERAs, the plans are now of sufficient duration to justify a re-evaluation of this provision. The Department has determined that the name of the agency official entrusted with binding signature authority also falls into the category of information that could change frequently. Therefore, the final rule is amended to remove this element of the requirement in section 251.6(a)(1) of the proposed rule.

Disbursement of Administrative Funds

Two commenters, although both generally supporting implementation of the proposed rule without change, expressed concern that the new requirements in section 251.8 for documenting the 40 percent pass-through of administrative funds may require additional monitoring. Section 251.8(d)(3) of the current regulations requires, as mandated by the EFAA, that State agencies pass through 40 percent of TEFAP administrative funds to emergency feeding organizations (EFOs). Current regulations also restrict the distribution of TEFAP administrative funds to EFOs. (The proposed rule would amend the definition of EFO in a way that does not materially affect the pass-through requirement.) While section 251.8 of the proposed rule retains the 40 percent pass-through requirement, the rule would permit the distribution of TEFAP administrative funds to non-EFOs. However, as discussed in the preamble to the proposed rule, State agencies which pass through 40 percent of such funds to ERAs that are EFOs, as defined in section 251.3, will be considered to have met the pass-through requirement. The Department will continue to monitor the distribution of TEFAP administrative funds by State agencies to ensure that they are in compliance with this requirement. Therefore, while TEFAP administrative funds may be distributed to non-EFOs under the provisions contained in the proposed rule, monitoring activities at the State or local level will not be affected.

Allowable Administrative Costs, Non-USDA Commodities

Upon further review of the proposed rule, the Department has identified a need to revise section 251.8 to clarify provisions relative to the distribution of TEFAP administrative funds to cover costs associated with the distribution of non-USDA commodities. Section 251.5(a) of the proposed rule requires that all organizations, including those that distribute only non-USDA commodities, must qualify as ERAs in all respects under section 251.3(d) in order to receive TEFAP administrative funds. Section 251.8(d) of the proposed rule refers to ''organizations which distribute only non-USDA commodities.'' For the sake of clarity, this rule revises section 251.8(d) to remove the term ''organizations'' and replaces it with ''ERA.''

Recordkeeping and Reporting Requirements

The proposed rule's reduction in the administrative burden for TEFAP drew the most praise from commenters. It was the factor most often noted by those who merely wrote to urge speedy implementation of the rule. However, one commenter expressed concern about the amendment to section 251.10(d)(2) which eliminates the requirement that State agencies report to FNS on a quarterly basis the total number of households served in TEFAP. While the commenter noted that this requirement has already been eliminated by TEFAP Policy Memorandum No. 12, dated December 23, 1997, the State agency has continued to collect and maintain such data. These data have been used to document the success of the program and for allocating resources at the local level. The Department is aware that such information is used by some ERAs and State agencies for various purposes. However, as discussed in the preamble to the proposed rule, the information is no longer useful to FNS. Therefore, while section 251.10(d)(2) of the proposed rule would no longer require that State agencies report such information to FNS, it does not prohibit State agencies from collecting household participation data from ERAs.

One commenter recommended that requirements associated with maintaining inventory records be kept to a minimum. While these requirements were not addressed in the proposed rule, TEFAP agencies have raised a number of questions and concerns about this issue. The Department is in the process of preparing guidance which will clarify what the Federal requirements are and explain the minimum requirements a State agency could choose to adopt in order to comply with the regulations.

Monitoring Requirements

Commenters were all in favor of the proposed rule's reduction in TEFAP monitoring requirements. However, one commenter recommended that sections 251.2(d)(2)(i) and 251.10(e) be revised to permit State agencies to delegate to ERAs with which States have agreements, the authority to conduct reviews of ERAs with which those ERAs in turn have agreements. Only in instances in which deficiencies are identified would the ERA be required to report to the State agency, which would assist in effecting corrective action. The Department is appreciative of the need to reduce the administrative burden as much as possible, but this goal must be balanced with the need for a certain level of accountability necessary to insure program integrity. The Department does not believe this balance can be achieved if State agencies are allowed to delegate authority for conducting reviews of ERAs to other ERAs. There must be a unified, independent and objective review authority. Therefore, the

Department cannot adopt this recommendation.

The commenter also expressed concern about the burden associated with selecting ERAs for review based on the dollar value of TEFAP commodities distributed or deficiencies that have been identified through various means. As discussed in the preamble to the proposed rule, State agencies would be afforded flexibility to develop a system for selecting ERAs for review. No selection criteria are mandated. The criteria listed in the preamble are merely suggestions regarding how to select sites for review. The only requirement is that the system must ensure that deficiencies in program administration are detected and resolved in an effective and efficient manner.

In reviewing the provisions contained in section 251.10, the Department has determined the following changes are necessary for clarification purposes. First, section 251.10(e)(3) of the proposed rule is being revised to include civil rights in the list of areas to be covered during a review, given the fact the revised FNS Instruction 113–3 will specify that on-site civil rights reviews be conducted at the frequency established in section 251.10(e). Since these reviews must be conducted at the same frequency, State agencies will likely consolidate civil rights and program reviews into one effort. Second, section 251.2(d)(2)(i) of the proposed rule would prohibit State agencies from delegating the authority to establish eligibility criteria for organizations or recipients, or for conducting reviews of ERAs. The prohibitions on delegating authority to establish eligibility criteria are then repeated in section 251.5(c). For the sake of consistency, section 251.10(e)(1) of the proposed rule is being revised to include the prohibition on the delegation of authority to conduct reviews.

Maintenance of Effort

Two commenters, although both generally supporting implementation of the proposed rule without change, were concerned about the new requirements for documenting the State maintenance-of-effort requirement, in section 251.10(h). The commenters suggested ‘‘additional monitoring’’ would be needed to insure compliance. This requirement is applied to State agencies, and compliance is monitored by the Department. Therefore, it will have no impact on monitoring activities at the State or local level.

Alien Provisions

Two commenters requested that the rule make clear that organizations are not required to determine the citizenship status of any recipient pursuant to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Pub. L. 104–208). As noted in the preamble to the proposed rule, the provisions of Welfare Reform affecting aliens do not require that States in any way restrict access of aliens to TEFAP. Welfare Reform gives States the option to provide, or not provide, program benefits to any individual who is not a citizen or a qualified alien. As discussed in the preamble to the proposed rule, the Department intends to publish a separate rulemaking to incorporate the provisions of Welfare Reform regarding eligibility of aliens for TEFAP and other food distribution programs.

Miscellaneous Comments

One commenter expressed concerns about the various problems involved in dealing with commodity losses and the procedures involved in establishing claims for those losses. The Department appreciates the comments provided and will consider them in developing proposals for a separate rulemaking aimed at addressing issues associated with commodity losses and claims.

Another commenter requested that an indemnification for product liability be granted by USDA to States and ERAs, referencing the Good Samaritan Act. Such language could also be included in all agreements between States and ERAs and between ERAs. As praiseworthy as this recommendation is, unfortunately the Good Samaritan Food Donation Act (Pub. L. 101–610) applies to donors of food only. Therefore, USDA lacks the authority to extend its protections to distributors of such food.

List of Subjects

7 CFR Part 250

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Indians, Infants and children, Commodity loan programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 251

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Grant programs-social programs, Indians, Infants and children, Commodity loan programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

Accordingly, 7 CFR parts 250 and 251 are amended as follows:

PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for part 250 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 612c, 612c note, 1431, 1431b, 1431e, 1431 note, 1446a–1, 1859, 2014, 2025; 15 U.S.C. 713c; 22 U.S.C. 1922; 42 U.S.C. 1751, 1755, 1758, 1760, 1761, 1762a, 1766, 3030a, 5179, 5180.

§ 250.3 [Amended]

2. In § 250.3, the definitions of *Food bank* and *Soup kitchen* are removed.

§ 250.13 [Amended]

3. In § 250.13:

a. Paragraph (a)(1)(iv) is amended by removing the words ‘‘emergency feeding organizations’’ wherever they appear and adding the words ‘‘eligible recipient agencies’’ in their place.

b. The last sentence of paragraph (k)(2) is amended by removing the words ‘‘, including, for example, State Food Distribution Advisory Council Reports’’.

§ 250.24 [Amended]

4. In § 250.24, paragraph (b)(4) is removed, and paragraphs (b)(5) and (b)(6) are redesignated as paragraphs (b)(4) and (b)(5), respectively.

§ 250.41 [Amended]

5. In § 250.41, the first sentence of paragraph (a)(1) is amended by removing the words ‘‘With the exception of section 110 commodities, which are to be distributed in accordance with the provisions of § 250.52, the’’ and adding in their place ‘‘The’’.

§ 250.52 [Removed]

6. Section 250.52 is removed.

PART 251—THE EMERGENCY FOOD ASSISTANCE PROGRAM

1. The authority citation for part 251 continues to read as follows:

Authority: 7 U.S.C. 7501–7516.

§ 251.1 [Amended]

2. In § 251.1, the word ‘‘Temporary’’ is removed.

3. In § 251.2:

a. Paragraph (a) is amended by adding the heading ‘‘*Food and Nutrition Service.’’;*

b. Paragraph (b) is amended by adding the heading ''*State Agencies.*'', by removing the words ''emergency feeding organizations'' and by adding the words ''eligible recipient agencies'' in their place;

c. Paragraph (c) is revised; and

d. Paragraph (d) is added.

The revision and addition read as follows:

§ 251.2 Administration.

* * * * *

(c) *Agreements.* (1) *Agreements between Department and States.* Each State agency that distributes donated foods to eligible recipient agencies or receives payments for storage and distribution costs in accordance with § 251.8 must perform those functions pursuant to an agreement entered into with the Department. This agreement will be considered permanent, with amendments initiated by State agencies, or submitted by them at the Department's request, all of which will be subject to approval by the Department.

(2) *Agreements between State agencies and eligible recipient agencies, and between eligible recipient agencies.* Prior to making donated foods or administrative funds available, State agencies must enter into a written agreement with eligible recipient agencies to which they plan to distribute donated foods and/or administrative funds. State agencies must ensure that eligible recipient agencies in turn enter into a written agreement with any eligible recipient agencies to which they plan to distribute donated foods and/or administrative funds before donated foods or administrative funds are transferred between any two eligible recipient agencies. All agreements entered into must contain the information specified in paragraph (d) of this section, and be considered permanent, with amendments to be made as necessary, except that agreements must specify that they may be terminated by either party upon 30 days' written notice. State agencies must ensure that eligible recipient agencies provide, on a timely basis, by amendment to the agreement, or other written documents incorporated into the agreement by reference if permitted under paragraph (d) of this section, any information on changes in program administration, including any changes resulting from amendments to Federal regulations or policy.

(d) *Contents of agreements between State agencies and eligible recipient agencies and between eligible recipient agencies.* (1) Agreements between State agencies and eligible recipient agencies and between eligible recipient agencies must provide:

(i) That eligible recipient agencies agree to operate the program in accordance with the requirements of this part, and, as applicable, part 250 of this chapter; and

(ii) The name and address of the eligible recipient agency receiving commodities and/or administrative funds under the agreement.

(2) The following information must also be identified, either in the agreement or other written documents incorporated by reference in the agreement:

(i) If the State agency delegates the responsibility for any aspect of the program to an eligible recipient agency, each function for which the eligible recipient agency will be held responsible; except that in no case may State agencies delegate responsibility for establishing eligibility criteria for organizations in accordance with § 251.5(a), establishing eligibility criteria for recipients in accordance with § 251.5(b), or conducting reviews of eligible recipient agencies in accordance with § 251.10(e);

(ii) If the receiving eligible recipient agency is to be allowed to further distribute TEFAP commodities and/or administrative funds to other eligible recipient agencies, the specific terms and conditions for doing so, including, if applicable, a list of specific organizations or types of organizations eligible to receive commodities or administrative funds;

(iii) If the use of administrative funds is restricted to certain types of expenses pursuant to § 251.8(e)(2), the specific types of administrative expenses eligible recipient agencies are permitted to incur;

(iv) Any other conditions set forth by the State agency.

4. Section 251.3 is revised to read as follows:

§ 251.3 Definitions.

(a) The terms used in this part that are defined in part 250 of this chapter have the meanings ascribed to them therein, unless a different meaning for such a term is defined herein.

(b) *Charitable institution* (which is defined differently in this part than in part 250 of this chapter) means an organization which—

(1) Is public, or

(2) Is private, possessing tax exempt status pursuant to § 251.5(a)(3); and

(3) Is not a penal institution (this exclusion also applies to correctional institutions which conduct rehabilitation programs); and

(4) Provides food assistance to needy persons.

(c) *Distribution site* means a location where the eligible recipient agency actually distributes commodities to needy persons for household consumption or serves prepared meals to needy persons under this part.

(d) *Eligible recipient agency* means an organization which—

(1) Is public, or

(2) Is private, possessing tax exempt status pursuant to § 251.5(a)(3); and

(3) Is not a penal institution; and

(4) Provides food assistance—

(i) Exclusively to needy persons for household consumption, pursuant to a means test established pursuant to § 251.5 (b), or

(ii) Predominantly to needy persons in the form of prepared meals pursuant to § 251.5(a)(2); and

(5) Has entered into an agreement with the designated State agency pursuant to § 251.2(c) for the receipt of commodities or administrative funds, or receives commodities or administrative funds under an agreement with another eligible recipient agency which has signed such an agreement with the State agency or another eligible recipient agency within the State pursuant to § 251.2(c); and

(6) Falls into one of the following categories:

(i) Emergency feeding organizations (including food banks, food pantries and soup kitchens);

(ii) Charitable institutions (including hospitals and retirement homes);

(iii) Summer camps for children, or child nutrition programs providing food service;

(iv) Nutrition projects operating under the Older Americans Act of 1965 (Nutrition Program for the Elderly), including projects that operate congregate Nutrition sites and projects that provide home-delivered meals; and

(v) Disaster relief programs.

(e) *Emergency feeding organization* means an eligible recipient agency which provides nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons, including low-income and unemployed persons. Emergency feeding organizations have priority over other eligible recipient agencies in the distribution of TEFAP commodities pursuant to § 251.4(h).

(f) *Food bank* means a public or charitable institution that maintains an established operation involving the provision of food or edible commodities, or the products of food or edible commodities, to food pantries, soup kitchens, hunger relief centers, or other food or feeding centers that, as an integral part of their normal activities, provide meals or food to feed needy persons on a regular basis.

(g) *Food pantry* means a public or private nonprofit organization that distributes food to low-income and unemployed households, including food from sources other than the Department of Agriculture, to relieve situations of emergency and distress.

(h) *Formula* means the formula used by the Department to allocate among States the commodities and funding available under this part. The amount of such commodities and funds to be provided to each State will be based on each State's population of low-income and unemployed persons, as compared to national statistics. Each State's share of commodities and funds shall be based 60 percent on the number of persons in households within the State having incomes below the poverty level and 40 percent on the number of unemployed persons within the State. The surplus commodities will be allocated to States on the basis of their weight (pounds), and the commodities purchased under section 214 of the Emergency Food Assistance Act of 1983 will be allocated on the basis of their value (dollars). In instances in which a State determines that it will not accept the full amount of its allocation of commodities purchased under section 214 of the Emergency Food Assistance Act of 1983, the Department will reallocate the commodities to other States on the basis of the same formula used for the initial allocation.

(i) *State agency* means the State government unit designated by the Governor or other appropriate State executive authority which has entered into an agreement with the United States Department of Agriculture under § 251.2(c).

(j) *Soup kitchen* means a public or charitable institution that, as an integral part of the normal activities of the institution, maintains an established feeding operation to provide food to needy homeless persons on a regular basis.

(k) *Value of commodities distributed* means the Department's cost of acquiring commodities for distribution under this part.

5. In § 251.4:

a. The words ''emergency feeding organization'', ''emergency feeding organizations'' and ''emergency feeding organization's'' are removed wherever they appear in the section, and the words ''eligible recipient agency'', ''eligible recipient agencies'' and ''eligible recipient agency's'' respectively are added in their place;

b. Paragraph (c)(1) is amended by removing the reference to ''§ 251.3(d)'' and adding a reference to ''§ 251.3(h)'' in its place;

c. Paragraph (d)(3) is removed;

d. Paragraph (f)(5) is amended by removing the reference ''§ 250.15'' and adding in its place the reference ''§ 250.30'';

e. Paragraphs (g) and (h) are revised;

f. Paragraph (j) is amended by adding the words ''that has signed an agreement with the respective State agencies'' after the words ''eligible recipient agency'';

The revisions read as follows:

§ 251.4 Availability of commodities.

* * * * *

(g) *Availability and control of donated commodities.* Donated commodities will be made available to State agencies only for distribution and use in accordance with this part. Except as otherwise provided in paragraph (f) of this section, donated commodities not so distributed or used for any reason may not be sold, exchanged, or otherwise disposed of without the approval of the Department. However, donated commodities made available under section 32 of Pub. L. 74–320 (7 U.S.C. 612c) may be transferred by eligible recipient agencies receiving commodities under this part, or recipient agencies, as defined in § 250.3 of this chapter, to any other eligible recipient agency or recipient agency which agrees to use such donated foods to provide without cost or waste, nutrition assistance to individuals in low-income groups. Such transfers will be effected only with prior authorization by the appropriate State agency and must be documented. Such documentation shall be maintained in accordance with § 251.10(a) of this part and § 250.16 of this chapter by the distributing agency and the State agency responsible for administering TEFAP and made available for review upon request.

(h) *Distribution to eligible recipient agencies—priority system and advisory boards.* (1) State agencies must distribute commodities made available under this part to eligible recipient agencies in accordance with the following priorities:

(i) *First priority.* When a State agency cannot meet all eligible recipient agencies' requests for TEFAP commodities, the State agency must give priority in the distribution of such commodities to emergency feeding organizations as defined under § 251.3(e). A State agency may, at its discretion, concentrate commodity resources upon a certain type or types of such organizations, to the exclusion of others.

(ii) *Second priority.* After a State agency has distributed TEFAP commodities sufficient to meet the needs of all emergency feeding organizations, the State agency must distribute any remaining program commodities to other eligible recipient agencies which serve needy people, but do not relieve situations of emergency and distress. A State agency may, at its discretion, concentrate commodity resources upon a certain type or types of such organizations, to the exclusion of others.

(2) *Delegation.* When a State agency has delegated to an eligible recipient agency the authority to select other eligible recipient agencies, the eligible recipient agency exercising this authority must ensure that any TEFAP commodities are distributed in accordance with the priority system set forth in paragraphs (h)(1)(i) and (h)(1)(ii) of this section. State agencies and eligible recipient agencies will be deemed to be in compliance with the priority system when eligible recipient agencies distribute TEFAP commodities to meet the needs of all emergency feeding organizations under their jurisdiction prior to making commodities available to eligible recipient agencies which are not emergency feeding organizations.

(3) *Existing networks.* Subject to the constraints of paragraphs (h)(1)(i) and (h)(1)(ii) of this section, State agencies may give priority in the distribution of TEFAP commodities to existing food bank networks and other organizations whose ongoing primary function is to facilitate the distribution of food to low-income households, including food from sources other than the Department.

(4) *State advisory boards.* Each State agency receiving TEFAP commodities is encouraged to establish a State advisory board representing all types of entities in the State, both public and private, interested in the distribution of such commodities. Such advisory boards can provide valuable advice on how resources should be allocated among various eligible outlet types, what areas have the greatest need for food assistance, and other important issues that will help States to use their program resources in the most efficient and effective manner possible. A State agency may expend TEFAP administrative funds to support the activities of an advisory board in accordance with § 251.8 of this part.

* * * * *

6. Section 251.5 is revised to read as follows:

§ 251.5 Eligibility determinations.

(a) *Criteria for determining eligibility of organizations.* Prior to making commodities or administrative funds available, State agencies, or eligible recipient agencies to which the State agency has delegated responsibility for the distribution of TEFAP commodities or administrative funds, must ensure that an organization applying for participation in the program meets the definition of an ''eligible recipient agency'' under § 251.3(d). In addition, applicant organizations must meet the following criteria:

(1) *Agencies distributing to households.* Organizations distributing commodities to households for home consumption must limit the distribution of commodities provided under this part to those households which meet the eligibility criteria established by the State agency in accordance with paragraph (b) of this section.

(2) *Agencies providing prepared meals.* Organizations providing prepared meals must demonstrate, to the satisfaction of the State agency, or eligible recipient agency to which they have applied for the receipt of commodities or administrative funds, that they serve predominantly needy persons. State agencies may establish a higher standard than ''predominantly'' and may determine whether organizations meet the applicable standard by considering socioeconomic data of the area in which the organization is located, or from which it draws its clientele. State agencies may not, however, require organizations to employ a means test to determine that recipients are needy, or to keep records solely for the purpose of demonstrating that its recipients are needy.

(3) *Tax-exempt status.* Private organizations must—

(i) Be currently operating another Federal program requiring tax-exempt status under the Internal Revenue Code (IRC), or

(ii) Possess documentation from the Internal Revenue Service (IRS) recognizing tax-exempt status under the IRC, or

(iii) If not in possession of such documentation, be automatically tax exempt as ''organized or operated exclusively for religious purposes'' under the IRC, or

(iv) If not in possession of such documentation, but required to file an application under the IRC to obtain tax-exempt status, have made application for recognition of such status and be moving toward compliance with the requirements for recognition of tax-exempt status. If the IRS denies a participating organization's application for recognition of tax-exempt status, the organization must immediately notify the State agency or the eligible recipient agency, whichever is appropriate, of such denial, and that agency will terminate the organization's agreement and participation immediately upon receipt of such notification. If documentation of IRS recognition of tax-exempt status has not been obtained and forwarded to the appropriate agency within 180 days of the effective date of the organization's approval for participation in TEFAP, the State agency or eligible recipient agency must terminate the organization's participation until such time as recognition of tax-exempt status is actually obtained, except that the State agency or eligible recipient agency may grant a single extension not to exceed 90 days if the organization can demonstrate, to the State agency's or eligible recipient agency's satisfaction, that its inability to obtain tax-exempt status within the 180 day period is due to circumstances beyond its control. It is the responsibility of the organization to document that it has complied with all IRS requirements and has provided all information requested by IRS in a timely manner.

(b) *Criteria for determining recipient eligibility.* Each State agency must establish uniform Statewide criteria for determining the eligibility of households to receive commodities provided under this part for home consumption. The criteria must:

(1) Enable the State agency to ensure that only households which are in need of food assistance because of inadequate household income receive TEFAP commodities;

(2) Include income-based standards and the methods by which households may demonstrate eligibility under such standards; and

(3) Include a requirement that the household reside in the geographic location served by the State agency at the time of applying for assistance, but length of residency shall not be used as an eligibility criterion.

(c) *Delegation of authority.* A State agency may delegate to one or more eligible recipient agencies with which the State agency enters into an agreement the responsibility for the distribution of commodities and administrative funds made available under this part. State agencies may also delegate the authority for selecting eligible recipient agencies and for determining the eligibility of such organizations to receive commodities and administrative funds. However, responsibility for establishing eligibility criteria for organizations in accordance with paragraph (a) of this section, and for establishing recipient eligibility criteria in accordance with paragraph (b) of this section, may not be delegated. In instances in which State agencies delegate authority to eligible recipient agencies to determine the eligibility of organizations to receive commodities and administrative funds, eligibility must be determined in accordance with the provisions contained in this part and the State plan. State agencies will remain responsible for ensuring that commodities and administrative funds are distributed in accordance with the provisions contained in this part.

7. Section 251.6 is revised to read as follows:

§ 251.6 Distribution plan.

(a) *Contents of the plan.* The State agency must submit for approval by the appropriate FNS Regional Office a plan which contains:

(1) A designation of the State agency responsible for distributing commodities and administrative funds provided under this part, and the address of such agency;

(2) A plan of operation and administration to expeditiously distribute commodities received under this part;

(3) A description of the standards of eligibility for recipient agencies, including any subpriorities within the two-tier priority system; and

(4) A description of the criteria established in accordance with § 251.5(b) which must be used by eligible recipient agencies in determining the eligibility of households to receive TEFAP commodities for home consumption.

(b) *Plan submission.* A complete plan will be required for Fiscal Year 2001, to be submitted no later than August 15, 2000. Thereafter, a complete plan must be submitted every 4 years, due no later than August 15 of the fiscal year prior to the end of the 4 year cycle.

(c) *Amendments.* State agencies must submit amendments to the distribution plan to the extent that such amendments are necessary to reflect any changes in program operations or administration as described in the plan, or at the request of FNS, to the appropriate FNS Regional Office.

8. Section 251.7 is revised to read as follows:

§ 251.7 Formula adjustments.

(a) *Commodity adjustments.* The Department will make annual adjustments to the commodity allocation for each State, based on updated unemployment statistics. These adjusted allocations will be effective for the entire fiscal year, subject to reallocation or transfer in accordance with this part.

(b) *Funds adjustments.* The Department will make annual adjustments of the funds allocation for each State based on updated unemployment statistics. These adjusted allocations will be effective for the entire fiscal year unless funds are recovered, withheld, or reallocated by FNS in accordance with § 251.8(f).

9. In § 251.8:

a. Paragraph (a) is amended by removing the reference ''§ 251.3(d)'' and adding in its place the reference ''§ 251.3(h)'';

b. Paragraph (b) is amended by removing the reference ''part 3015'' and adding in its place the reference ''part 3016 or part 3019, as applicable.'';

c. Paragraph (c)(1) is amended by removing the words ''U.S. Treasury Department checks or'';

d. Paragraph (c)(2) is amended by:

1. removing the words ''FNS Instruction 407–3 (Grant Award Process)'' and adding in their place the words ''procedures established by FNS'';

2. removing from the first sentence the words ''either'' and ''or a U.S. Treasury check pursuant to submission of the SF–270, Request for Advance or Reimbursement'';

3. removing the second sentence; and

4. removing reference to ''§ 251.8(e)'' and in its place adding reference to ''paragraph (f) of this section'';

e. Paragraphs (d) and (e) are redesignated as paragraphs (e) and (f), and new paragraph (d) is added; and

f. Newly redesignated paragraph (e) is revised.

The addition and revision read as follows:

§ 251.8 Payment of funds for administrative costs.

* * * * *

(d) *Priority for eligible recipient agencies distributing USDA commodities.* State agencies and eligible recipient agencies distributing administrative funds must ensure that the administrative funding needs of eligible recipient agencies which receive USDA commodities are met, relative to both USDA commodities and any non-USDA commodities they may receive, before such funding is made available to eligible recipient agencies which distribute only non-USDA commodities.

(e) *Use of funds.* (1) *Allowable administrative costs.* State agencies and eligible recipient agencies may use funds made available under this part to pay the direct expenses associated with the distribution of USDA commodities and commodities secured from other sources to the extent that the commodities are ultimately distributed by eligible recipient agencies which have entered into agreements in accordance with § 251.2. Direct expenses include the following, regardless of whether they are charged to TEFAP as direct or indirect costs:

(i) The intrastate and interstate transport, storing, handling, repackaging, processing, and distribution of commodities; except that for interstate expenditures to be allowable, the commodities must have been specifically earmarked for the particular State or eligible recipient agency which incurs the cost;

(ii) Costs associated with determinations of eligibility, verification, and documentation;

(iii) Costs of providing information to persons receiving USDA commodities concerning the appropriate storage and preparation of such commodities;

(iv) Costs involved in publishing announcements of times and locations of distribution; and

(v) Costs of recordkeeping, auditing, and other administrative procedures required for program participation.

(2) *State restriction of administrative costs.* A State agency may restrict the use of TEFAP administrative funds by eligible recipient agencies by disallowing one or more types of expenses expressly allowed in paragraph (e)(1) of this section. If a State agency so restricts the use of administrative funds, the specific types of expenses the State will allow eligible recipient agencies to incur must be identified in the State agency's agreements with its eligible recipient agencies, or set forth by other written notification, incorporated into such agreements by reference.

(3) *Agreements.* In order to be eligible for funds under paragraph (e)(1) of this section, eligible recipient agencies must have entered into an agreement with the State agency or another eligible recipient agency pursuant to § 251.2(c).

(4) *Pass-through requirement-local support to emergency feeding organizations.* (i) Not less than 40 percent of the Federal Emergency Food Assistance Program administrative funds allocated to the State agency in accordance with paragraph (a) of this section must be:

(A) Provided by the State agency to emergency feeding organizations that have signed an agreement with the State agency as either reimbursement or advance payment for administrative costs incurred by emergency feeding organizations in accordance with paragraph (e)(1) of this section, except that such emergency feeding organizations may retain advance payments only to the extent that they actually incur such costs; or

(B) Directly expended by the State agency to cover administrative costs incurred by, or on behalf of, emergency feeding organizations in accordance with paragraph (e)(1) of this section.

(ii) Any funds allocated to or expended by the State agency to cover costs incurred by eligible recipient agencies which are not emergency feeding organizations shall not count toward meeting the pass-through requirement.

(iii) State agencies must not charge for commodities made available under this part to eligible recipient agencies.

* * * * *

10. In § 251.9:

a. The words ''emergency feeding organization'' and ''emergency feeding organizations'' are removed wherever they appear in the section, and added in their place are the words ''eligible recipient agency'' and ''eligible recipient agencies'' respectively;

b. Paragraph (a) is revised;

c. Paragraph (c) introductory text and paragraph (c)(2)(i) are amended by removing the references ''3016.24(b)(1)'' and ''3016.24(c) through 3016.24(f)'' and adding the reference ''part 3016 or 3019, as applicable'' in their place;

d. Paragraph (e) is removed, and paragraphs (f) and (g) are redesignated as paragraphs (e) and (f), respectively;

e. Newly redesignated paragraph (e) is amended by removing the words ''SF–269, Financial Status Report'' and adding the words ''FNS–667, Report of TEFAP Administrative Costs'' in their place.

f. Newly redesignated paragraph (f) is amended by removing the reference ''SF–269'' wherever it appears and adding the reference ''FNS–667'' in its place.

The revision reads as follows:

§ 251.9 Matching of funds.

(a) *State matching requirement.* The State must provide a cash or in-kind contribution equal to the amount of TEFAP administrative funds received under § 251.8 and retained by the State agency for State-level costs or made available by the State agency directly to eligible recipient agencies that are not emergency feeding organizations as defined in § 251.3(e). The State agency will not be required to match any portion of the Federal grant passed through for administrative costs incurred by emergency feeding organizations or directly expended by the State agency for such costs in accordance with § 251.8(e)(4) of this part.

* * * * *

11. In § 251.10:

a. Paragraph (a) is revised;

b. Paragraph (b) is amended by adding the words ''commodities distributed for home consumption and meals prepared from'' after the word ''law,'';

c. Paragraph (c) is amended by adding the words ''for home consumption or availability of meals prepared from commodities'' after the word ''foods''.

d. Paragraphs (d) and (e) are revised;

e. Paragraph (f) is amended by:

1. removing the words ''emergency feeding organizations and distribution sites'', ''emergency feeding organization or distribution site'' and ''emergency feeding organization's or distribution site's'' wherever they appear, and adding in their place the words ''eligible recipient agencies'', ''eligible recipient agency'' and ''eligible recipient agency's'' respectively;

2. adding the words ''or meal service'' after the word ''foods'' in paragraph (f)(1) introductory text;

3. adding the words ''for home consumption or prepared meals containing TEFAP commodities'' after the word ''commodities'' in paragraph (f)(1)(ii);

4. adding the words ''or meal service'' at the end of paragraph (f)(1)(iii);

5. adding the words ''or meal service'' after the word ''foods'' in paragraph (f)(2); and

6. removing the words ''the distribution of commodities by'' in paragraph (f)(4);

f. Paragraph (g) is amended by removing the words ''emergency feeding organizations'' and adding in their place ''eligible recipient agencies'';

g. Paragraph (h) is revised.

The revisions read as follows:

§ 251.10 Miscellaneous provisions.

(a) *Records.* (1) *Commodities.* State agencies, subdistributing agencies (as defined in § 250.3 of this chapter), and eligible recipient agencies must maintain records to document the receipt, disposal, and inventory of commodities received under this part that they, in turn, distribute to eligible recipient agencies. Such records must be maintained in accordance with the requirements set forth in § 250.16 of this chapter. Eligible recipient agencies must sign a receipt for program commodities which they receive under this part for distribution to households or for use in preparing meals, and records of all such receipts must be maintained.

(2) *Administrative funds.* In addition to maintaining financial records in accordance with 7 CFR part 3016, State agencies must maintain records to document the amount of funds received under this part and paid to eligible recipient agencies for allowable administrative costs incurred by such eligible recipient agencies. State agencies must also ensure that eligible recipient agencies maintain such records.

(3) *Household information.* Each distribution site must collect and maintain on record for each household receiving TEFAP commodities for home consumption, the name of the household member receiving commodities, the address of the household (to the extent practicable), the number of persons in the household, and the basis for determining that the household is eligible to receive commodities for home consumption.

(4) *Record retention.* All records required by this section must be retained for a period of 3 years from the close of the Federal Fiscal Year to which they pertain, or longer if related to an audit or investigation in progress. State agencies may take physical possession of such records on behalf of their eligible recipient agencies. However, such records must be reasonably accessible at all times for use during management evaluation reviews, audits or investigations.

* * * * *

(d) *Reports.* (1) *Submission of Form FNS–667.* Designated State agencies must identify funds obligated and disbursed to cover the costs associated with the program at the State and local level. State and local costs must be identified separately. The data must be identified on Form FNS–667, Report of Administrative Costs (TEFAP) and submitted to the appropriate FNS Regional Office on a quarterly basis. The quarterly report must be submitted no later than 30 calendar days after the end of the quarter to which it pertains. The final report must be submitted no later than 90 calendar days after the end of the fiscal year to which it pertains.

(2) *Reports of excessive inventory.* Each State agency must complete and submit to the FNS Regional Office reports to ensure that excessive inventories of donated foods are not maintained, in accordance with the requirements of § 250.17(a) of this chapter.

(e) *State monitoring system.* (1) Each State agency must monitor the operation of the program to ensure that it is being administered in accordance with Federal and State requirements. State agencies may not delegate this responsibility.

(2) Unless specific exceptions are approved in writing by FNS, the State agency monitoring system must include:

(i) An annual review of at least 25 percent of all eligible recipient agencies which have signed an agreement with the State agency pursuant to § 251.2(c), provided that each such agency must be reviewed no less frequently than once every four years; and

(ii) An annual review of one-tenth or 20, whichever is fewer, of all eligible recipient agencies which receive TEFAP commodities and/or administrative funds pursuant to an agreement with another eligible recipient agency. Reviews must be conducted, to the maximum extent feasible, simultaneously with actual distribution of commodities and/or meal service, and eligibility determinations, if applicable. State agencies must develop a system for selecting eligible recipient agencies for review that ensures deficiencies in program administration are detected and resolved in an effective and efficient manner.

(3) Each review must encompass, as applicable, eligibility determinations, food ordering procedures, storage and warehousing practices, inventory controls, approval of distribution sites, reporting and recordkeeping requirements, and civil rights.

(4) Upon concurrence by FNS, reviews of eligible recipient agencies which have been conducted by FNS Regional Office personnel may be incorporated into the minimum coverage required by paragraph (e)(2) of this section.

(5) If deficiencies are disclosed through the review of an eligible recipient agency, the State agency must submit a report of the review findings to the eligible recipient agency and ensure that corrective action is taken to eliminate the deficiencies identified.

* * * * *

(h) *Maintenance of effort.* The State may not reduce the expenditure of its own funds to provide commodities or services to organizations receiving funds or services under the Emergency Food Assistance Act of 1983 below the level of such expenditure existing in the fiscal year when the State first began administering TEFAP, or Fiscal Year 1988, which is the fiscal year in which the maintenance-of-effort requirement became effective, whichever is later.

Dated: December 21, 1999.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 99–33619 Filed 12–28–99; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 253 and 254

RIN 0584–AB67

Food Distribution Programs: Definition of ''Indian Tribal Household''

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule makes final an interim rule published in the **Federal Register** on January 11, 1994. It broadens the regulatory definition of ''Indian tribal household'' in the Food Distribution Program on Indian Reservations (FDPIR) and the Food Distribution Program for Indian Households in Oklahoma (FDPIHO). Previous to the amendment of the definition, households residing in areas approved for service near Indian reservations (''near areas''), or in FNS service areas in Oklahoma, that contained Native American children, but no Native American adults, were excluded from the programs. Also, households in near areas were excluded from FDPIR if they did not contain a tribal member of the administering Indian tribe or tribes in that area. The intended effect of the change is to allow more low-income households to be served in FDPIR and FDPIHO.

EFFECTIVE DATE: This final rule is effective on December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Lillie F. Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 612, 4501 Ford Ave., Alexandria, Virginia 22302–1594 or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

I. Procedural Matters
II. Background and Discussion of the Final Rule

I. Procedural Matters

Executive Order 12866

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

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service 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, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The programs addressed in this action are listed in the Catalog of Federal Domestic Assistance under 10.550 and 10.570, and for the reasons set forth in the final rule in 7 CFR 3015, Subpart V, and related Notice (48 FR 29115), are included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Since the provisions contained in this rule were implemented under the interim rule published in the **Federal Register** on January 11, 1994 (59 FR 1447), it will have no impact.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions, all applicable administrative procedures must be exhausted.

Paperwork Reduction Act

This final rule does not contain information collection requirements subject to the approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

II. Background and Discussion of the Final Rule

FDPIR was established by section 4(b) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2013(b)), as an alternative to food stamps for low-income Native Americans who, because they live on or near Indian reservations in sparsely populated areas, may not have convenient access to food stamp certification offices or authorized food stamp retailers. On January 11, 1994, the Department published an interim rule in the **Federal Register** (59 FR 1447) that amended the definition of ''Indian tribal household'' in 7 CFR 253.2(c) and 254.2(d) to read, ''* * * a household in which at least one household member is recognized as a tribal member by any Indian tribe* * *'' (as ''Indian tribe'' is defined in 7 CFR Part 253). Prior to implementation of the interim rule, the definition restricted Indian tribal households to those which contained an adult Native American member. This excluded households containing Native American children, but no Native American adults, from participation in FDPIR in areas near Indian reservations that had been approved for service (''near areas'') or, in FDPIHO, in the areas approved for service (''FNS service areas'').

Prior to implementation of the interim rule, the definition contained in 7 CFR 253.2(c) also restricted Indian tribal households to those households which contained a member recognized by the administering Indian tribal organization as a tribal member. This excluded from participation in FDPIR those households containing a Native American member or members from any Indian tribes other than the tribe administering the program in the ''near areas'' in which the household resided. Households with a Native American member of any Indian tribe residing in an FNS service area have always been eligible for participation in FDPIHO. However, the language in 7 CFR 254.2(d) was amended by the interim rule simply to provide greater clarity.

The interim rule also clarified in 7 CFR 253.6(b)(1) that all households living on Indian reservations on which FDPIR is available, and that meet other program eligibility requirements, are eligible to receive program benefits, regardless of whether they contain a

Native American member. Although not previously expressed clearly in Federal regulations, this has always been the policy under which FDPIR has operated on all participating reservations. In the same section, amended language makes clear that Indian tribal organizations (or State agencies) must serve all Indian tribal households living in ''near areas'' and meeting other eligibility requirements. Indian tribal organizations and State agencies must accept official documentation of an individual's membership in an Indian tribe in determining the household's eligibility for program benefits.

The Department received no comments on the interim rule, and is adopting the interim rule as final without change.

List of Subjects

7 CFR Part 253

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 254

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, the interim rule amending 7 CFR Parts 253 and 254, which was published at 59 FR 1447 on January 11, 1994, is adopted as a final rule without change.

Dated: December 21, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–33620 Filed 12–28–99; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV00–993–1 IFR]

Dried Prunes Produced in California; Changes in Producer District Boundaries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule realigns the boundaries of seven districts established for independent producer representation on the Prune Marketing Committee (Committee) under Marketing Order No. 993. The Committee is responsible for local administration of the marketing order which regulates the handling of dried prunes grown in California. Due to shifts in the production areas, the current seven production districts for independent producer representation on the Committee are out of balance. The realignment provides for more equitable independent producer representation on the Committee, consistent with current industry demographics.

EFFECTIVE DATE: The interim final rule is effective December 30, 1999. Comments which are received by January 28, 2000 will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901; Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended [7 CFR Part 993], regulating the handling of dried prunes produced in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Paragraph (a) of § 993.128 of the order's administrative rules and regulations lists and describes the boundaries of each of the seven independent grower districts. This rule realigns the boundaries of the seven districts based on a unanimous recommendation of the Committee made on November 30, 1999. To be consistent with current industry demographics, this rule ensures that, insofar as practicable, each district represents an equal number of independent producers and an equal volume of prunes grown by such producers.

Section 993.24 of the order provides that the Committee shall consist of 22 members, of which 14 shall represent producers, 7 shall represent handlers, and 1 shall represent the public. The 14 producer member positions are apportioned between cooperative producers and independent producers. The apportionment, insofar as is practicable, is the same as the percentage of the total prune tonnage handled by the cooperative and independent handlers during the year preceding the year in which nominations are made is to the total handled by all handlers. In recent years and currently, cooperative producers and independent producers each have been eligible to nominate seven members.

Section 993.28(a) of the order provides that, for independent producers, the Committee shall, with the approval of the Secretary of Agriculture, divide the production area into districts giving, insofar as practicable, equal representation throughout the production area by numbers of independent producers and production of prune tonnage by such producers. When revisions are required, the Committee must make its recommendations to the Secretary of Agriculture to change the district boundaries prior to January 31 of any year in which nominations are to be made. Nominations are made in all even-numbered years.

Since the last redistricting in 1994, the number of producers and volume of production in most districts has changed, causing imbalances among some districts. Prune orchards were planted to replace other crops which expanded the acreage base to new geographic areas and intensified the prune plantings in other districts. Thus, redistricting is needed to bring the districts in line with order requirements and current California prune industry demographics.

This rule establishes new district alignments as shown below:

District	Counties in prior district alignment	Counties in new district alignment
1	Colusa, Glenn	Colusa, Glenn, Solano, Yolo.
2	Sutter (Central)	Sutter (North).[1]
3	Sutter (South), Yolo	Sutter (South).[1]
4	Alpine, Amador, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sonoma, Tehama and Trinity.	Alpine, Amador, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sonoma, Tehama and Trinity.
5	Butte, Sutter (North)	Butte.
6	Yuba	Yuba.
7	Fresno, Kings, Merced, San Benito, San Joaquin, Santa Clara, Solano, Tulare & all other counties not included in Districts 1, 2, 3, 4, 5, & 6.	Fresno, Kern, Kings, Madera, Merced, San Benito, San Joaquin, Santa Clara, Tulare & all other counties not included in Districts 1, 2, 3, 4, 5, & 6.

[1] The north/south boundary of Sutter County will be changed to Franklin Road.

The Committee calculated the percentage of total independent prune growers and the percentage of total independent grower prune tonnage for each proposed new district. The two percentages were averaged for each district to determine a representation factor for each district. The optimal representation factor for each district is 14.29 percent (100 percent divided by 7 districts).

The representation factors for the seven old and the seven new districts are shown below, based on the 1998–99 crop year (August 1–July 31) data.

District	Representation factor	
	Old districts (percent)	New districts (percent)
1	9.75	15.62
2	11.94	16.87
3	12.5	16.37
4	10.33	10.33
5	23.97	12.35
6	14.43	14.43
7	17.02	13.97

The redistricting is desirable because it allows each district to approximate the optimal representation factor, while maintaining a continuous geographic boundary for each district.

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

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

There are approximately 1,250 producers of dried prunes in the production area and approximately 20 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Last year, 13 of the 20 handlers (65%) shipped under $5,000,000 of dried prunes and could be considered small handlers. An estimated 1,141 producers (91 percent) of the 1,250 producers, could be considered small growers with annual income less than $500,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This rule realigns the boundaries of the seven districts established for independent producer representation on the Committee. To be consistent with current industry demographics, this rule ensures that, insofar as practicable, each district represents an equal number of independent producers and an equal volume of prunes grown by such producers.

Shifts in the prune production area have lead to greater differences among the current districts than is desirable for equitable independent producer representation. As shown below, District 1 represents less than 10% of California's independent prune producers/production while District 5 represents nearly 24% as currently defined.

The representation factors for the seven old and the seven new districts are shown below, based on the 1998–99 crop year (August 1–July 31) data.

District	Representation factor[1]	
	Old districts (percent)	New districts (percent)
1	9.75	15.62
2	11.94	16.87
3	12.5	16.37
4	10.33	10.33
5	23.97	12.35
6	14.43	14.43
7	17.02	13.97

[1] The optimal representation factor for each district is 14.29 percent (100 percent divided by 7 districts).

The economic vagaries of prune production are responsible for the current imbalance among production districts. When the average grower return per ton reached $1,121 in 1993, prune tree sales by nurseries jumped to 1.5 million trees from a normal maintenance and replacement level of about 300,000 trees. Prune orchards were planted to replace other crops which expanded the acreage base to new geographic areas and intensified the prune plantings in others. Non-bearing acreage increased from 8,000 acres in 1993 to 26,000 acres in 1998.

More recently, grower prices have steadily declined from 1993's peak of $1,121 per ton to $763 in 1998. This lead to the removal of over 5,000 acres in 1998 alone. The overall result is a shift in prune production which leaves imbalance in the composition of independent producer districts.

The recommended realignment of district boundaries will yield more equitable representation. Currently, the representation factors for the districts range from 9.75% to 23.97%. The revised alignment narrows this range to 10.33% to 16.87%. The California prune industry considered other district alignments; however, none would not have improved the balance among districts as much as this rule. Since the weather-reduced 1998-99 prune crop (102,000 tons) was the smallest since 1986, the Committee also did a representation factor analysis on the more typical 1997–98 crop (205,000 tons) to ensure that the short crop year did not produce atypical results. The results were consistent as far as each district's percent of the total. Another alternative considered was to do nothing, but this would not have done anything to correct the representation factor imbalance, and this was not acceptable.

The Committee unanimously recommended this change at its November 30, 1999, meeting. Since the last redistricting in 1994, the number of producers and volume of production in most districts has changed causing imbalances among some districts. Thus, redistricting is needed to bring the districts in line with order requirements and current California prune industry demographics.

This rule establishes new district alignments as shown below:

District	Counties in prior district alignment	Counties in new district alignment
1	Colusa, Glenn	Colusa, Glenn, Solano, Yolo.
2	Sutter (Central)	Sutter (North).[1]
3	Sutter (South), Yolo	Sutter (South).[1]
4	Alpine, Amador, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sonoma, Tehama and Trinity.	Alpine, Amador, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sonoma, Tehama and Trinity.
5	Butte, Sutter (North)	Butte.
6	Yuba	Yuba.
7	Fresno, Kings, Merced, San Benito, San Joaquin, Santa Clara, Solano, Tulare & all other counties not included in Districts 1, 2, 3, 4, 5, & 6.	Fresno, Kern, Kings, Madera, Merced, San Benito, San Joaquin, Santa Clara, Tulare & all other counties not included in Districts 1, 2, 3, 4, 5, & 6.

[1] The north/south boundary of Sutter County will be changed to Franklin Road.

At the November 30, 1999, meeting, the Committee discussed the financial impact of this change on handlers and producers. All independent producers regardless of size will continue to have representation and the overall representation will be more equitable as previously explained. There will be no additional costs generated by this rule. Since this rule affects only independent producers, there is no expected impact on handlers.

This rule will realign the boundaries of seven independent grower districts. This rule allows each district to approximate the optimal representation factor, while maintaining a continuous geographic boundary for each district.

This rule will impose no additional reporting or recordkeeping requirements on either small or large entities. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the California dried prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 30, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The Committee itself is composed of 22 members, of which 7 are handlers, 14 are producers and 1 is a public representative.

Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations to the Committee. The Committee's Ad-Hoc Redistricting Subcommittee met on November 2, 1999, and discussed this issue in detail. That meeting was also a public meeting and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the ''**FOR FURTHER INFORMATION CONTACT**'' section.

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

This rule invites comments on realigning the independent producer districts as currently prescribed in § 993.128(a) of the administrative rules and regulations. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The order requires that independent producer nomination meetings be held for each of the seven districts prior to March 8, 2000, for the term of office beginning June 1, 2000, and this action should be in place before those meetings. The first meeting is scheduled on January 18, 2000; (2) the industry is aware of this action, which was unanimously recommended by the Committee at an open meeting on November 30, 1999; and (3) this rule provides a 30-day comment period, which is considered appropriate in view of the above, and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and Recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 993.128, paragraph (a) is revised to read as follows:

§ 993.128 Nominations for membership.

(a) *Districts.* In accordance with the provisions of § 993.28, the districts referred to therein are described as follows:

District No. 1. The counties of Colusa, Glenn, Solano and Yolo.

District No. 2. That portion of Sutter County north of a line extending along Franklin Road easterly to the Yuba County line and westerly to the Colusa County line.

District No. 3. That portion of Sutter County south of a line extending along Franklin Road easterly to the Yuba County line and westerly to the Colusa County line.

District No. 4. The counties of Alpine, Amador, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sonoma, Tehama and Trinity.

District No. 5. All of Butte County.

District No. 6. All of Yuba County.

District No. 7. The counties of Fresno, Kern, Kings, Madera Merced, San Benito, San Joaquin, Santa Clara, Tulare and all other counties not included in Districts 1, 2, 3, 4, 5 and 6.

* * * * *

Dated: December 21, 1999.

James R. Frazier,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–33642 Filed 12–28–99; 8:45 am]

BILLING CODE 3410–02–D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 99–096–1]

Change in Disease Status of Portugal Because of African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations governing the importation of pork and pork products by adding Portugal to the list of regions where African swine fever exists. We are taking this action because there has been an outbreak of African swine fever in Portugal. This action will restrict the importation of pork and pork products into the United States from Portugal and is necessary to prevent the introduction of African swine fever into the United States.

DATES: Interim rule effective November 5, 1999. We invite you to comment on this docket. We will consider all comments that we receive by February 28, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–096–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–096–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; or phone (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various animal diseases, including rinderpest, foot-and-mouth disease, African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.8 of the regulations lists regions of the world where African swine fever (ASF) exists or is reasonably believed to exist. Section 94.8 also restricts the importation of pork and pork products into the United States from the listed regions.

Prior to the effective date of this interim rule, Portugal was considered free of ASF. However, on November 5, 1999, a suspected outbreak of ASF was detected in Portugal. The outbreak was confirmed by laboratory tests on November 15, 1999. On November 19, 1999, it was reported by the Director General of Veterinary Services of Portugal's Ministry of Agriculture. Therefore, in order to prevent the introduction of ASF into the United States, we are amending the regulations by adding Portugal to the list of regions in 94.8 where ASF exists or is reasonably believed to exist. We are making this action effective retroactively to November 5, 1999, which was the initial date of detection. As a result of this action, the importation, into the United States, of pork and pork products that left Portugal on or after November 5, 1999, will be restricted.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the introduction of ASF into the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule amends the regulations governing the importation of pork and pork products by adding Portugal to the list of regions where ASF exists. We are taking this action because there has been an outbreak of ASF in Portugal. This action will restrict the importation, into the United States, of pork and pork products that left Portugal on or after November 5, 1999. This action is necessary to prevent the introduction of ASF into the United States.

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule would have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our final regulatory flexibility analysis.

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) Has retroactive effect to November 5, 1999; and (3) Does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

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

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

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

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

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

§ 94.8 [Amended]

2. In 94.8, the introductory paragraph is amended by removing the word ‘‘and’’ immediately before ‘‘Malta,’’ and adding the word ‘‘Portugal,’’ immediately following ‘‘Malta,’’.

Done in Washington, DC, this 17th day of December 1999 .

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–33839 Filed 12–28–99; 8:45 am]

BILLING CODE 3410–34–U

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

Technical Amendments to FDIC Regulations Relating to Rules of Practice and Procedure and Deposit Insurance Coverage; Correction

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule; correction.

SUMMARY: The FDIC published in the **Federal Register** of November 16, 1999, a document making technical amendments to various sections of its Local Rules of Practice and Procedure (Local Rules). The document also made a conforming technical amendment to the deposit insurance regulations. This document corrects an amendatory statement in the Local Rules.

EFFECTIVE DATE: November 16, 1999.

FOR FURTHER INFORMATION CONTACT: Jenetha M. Hickson, Alternate Liaison Officer; 202–898–3807.

SUPPLEMENTARY INFORMATION: In rule FR Doc. 99–29830 , on page 62101, in the first column, correct amendatory statement 14 to read as follows:

‘‘14. Section 308.156 is amended by removing the words ‘and a person’ and adding in their place the words ‘and/or an individual’ and by adding the words ‘or money laundering’ after the word ‘trust’.’’

Dated: December 23, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–33812 Filed 12–28–99; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–235–AD; Amendment 39–11484; AD 99–27–03]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 050 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F27 Mark 050 series airplanes. This action requires repetitive inspections of the connections between certain ribs and stringers of the wing skins to detect loose or missing rivets or gaps, and corrective actions, if necessary. This action also requires eventual modification of the rib-stringer connection, which terminates the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent fatigue cracking in the skin and stringers, which could result in reduced structural integrity of the wings.

DATES: Effective January 13, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 13, 2000.

Comments for inclusion in the Rules Docket must be received on or before January 28, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–235–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE

Nieuw-Vennep, The Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on certain Fokker Model F27 Mark 050 series airplanes. The RLD advises that rivet heads were missing at the rib-to-stringer connections of both the upper and lower wing skin. Investigation revealed that understrength rivets were used in the affected connections. Such deficient connections reduce the static buckling strength of the wing skin and may cause fretting of the stringer. This condition, if not corrected, could result in fatigue cracking in the skin and stringers, which could result in reduced structural integrity of the wings.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin SB50–57–019, dated February 27, 1998, which describes procedures for repetitive detailed visual inspections of the connections between ribs 11260, 11860, 12660, and 13460, and stringers 4, 5, 6, and 7 of the top and bottom wing skins to detect loose or missing rivets or gaps. The service bulletin also describes procedures for modification of the rib-stringer connection. The modification involves reaming the original rivet holes of the rib-stringer connections, performing a rotating probe eddy current inspection to detect cracks of these rivet holes, performing corrective actions for cases where cracking is detected, and installing connecting angles between the stringers and ribs. The corrective actions include reaming the diameter of the rivet hole, performing a surface probe eddy current inspection to detect cracks of the surrounding of each rivet hole, drilling out rivets, removing connecting angles, and repairing angles, as applicable. Accomplishment of the modification eliminates the need for the repetitive inspections.

For cases where cracking is detected during the visual inspection, the service bulletin describes procedures for accomplishing either of the following temporary repairs and eventual modification of the rib-stringer connection (described previously):

- Performing a surface probe eddy current inspection to detect cracks in the surrounding of the rib-stringer connection in the area of the gap and/or loose or missing rivets; and installing a shim between the rib-girder and the stringer and new blind rivets, and repairing the crack; as applicable.
- Performing a surface probe eddy current inspection to detect cracks in the surrounding of the rib-stringer connection in the area of the gap and/or loose or missing rivet; and installing connecting angles and repairing the crack; as applicable.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA 1998–023/2, dated October 30, 1998, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or the RLD (or its delegated agent). In light of the type of repair required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this AD, a repair approved by either the FAA or the RLD is acceptable for compliance with this AD.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 11 work hours to accomplish the required visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the visual inspection required by this AD would be $660 per airplane, per inspection cycle.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately between 80 and 116 work hours to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $11,850 per airplane. Based on these figures, the cost impact of the modification required by this AD would be between $16,650 and $18,810 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–235–AD.'' The postcard will be date stamped and returned to the commenter.

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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–27–03 Fokker: Amendment 39–11484. Docket 99–NM–235–AD.

Applicability: Model F27 Mark 050 series airplanes, serial numbers 20103 through 20298 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been 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 (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in the skin and stringers, which could result in reduced structural integrity of the wings, accomplish the following:

(a) Perform a detailed visual inspection of the connections between ribs 11260, 11860, 12660, and 13460, and stringers 4, 5, 6, and 7 of the top and bottom wing skins to detect loose or missing rivets or gaps, in accordance with Part 1 of Fokker Service Bulletin SBF50–57–019, dated February 27, 1998; at the time specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this AD, as applicable. Repeat the inspection thereafter at intervals not to exceed 2,500 flight cycles.

(1) For airplanes that have accumulated less than 15,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 15,000 total flight cycles, or within 12 months after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 15,000 total flight cycles or more but less than 20,000 total flight cycles as of the effective date of this AD: Inspect within 12 months after the effective date of this AD.

(3) For airplanes that have accumulated 20,000 total flight cycles or more but less than 25,000 total flight cycles as of the effective date of this AD: Inspect within 6 months after the effective date of this AD.

(4) For airplanes that have accumulated 25,000 total flight cycles or more as of the effective date of this AD: Inspect within 3 months after the effective date of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required.''

(b) Except as provided by paragraph (d) of this AD, if no loose or missing fastener, or no gap is found during any inspection required by paragraph (a) of this AD, prior to the accumulation of 40,000 total flight cycles, or within 18 months after the effective date of this AD, whichever occurs later, modify the rib-stringer connections (i.e., reaming of rivet holes, rotating probe eddy current inspections, corrective actions, and installation of connecting angles) in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF50–57–019, dated February 27, 1998. Accomplishment of the actions required by this paragraph constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD.

(c) If any loose or missing fastener, or any gap is found during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish the actions specified in paragraph (c)(1), (c)(2), or (c)(3) of this AD in accordance with Fokker Service Bulletin SBF50–57–019, dated February 27, 1998.

(1) Accomplish the modification specified in paragraph (b) of this AD.

(2) Except as provided by paragraph (d) of this AD, accomplish the temporary repair (i.e., surface probe eddy current inspection, repair, and installation of a shim and new blind rivets) in accordance with Part 3 of the Accomplishment Instructions of the service bulletin. Within 500 flight cycles after accomplishment of this temporary repair, accomplish the modification specified in paragraph (b) of this AD.

(3) Except as provided by paragraph (d) of this AD, accomplish the temporary repair (i.e., surface probe eddy current inspection, repair, and installation of connecting angles) in accordance with Part 4 of the Accomplishment Instructions of the service bulletin. Within 2,500 flight cycles after accomplishment of this temporary repair, accomplish the modification specified in paragraph (b) of this AD.

(d) If any discrepancy is found during any inspection required by paragraph (a), (b), or (c) of this AD; and Fokker Service Bulletin SBF50–57–019, dated February 27, 1998, specifies to contact Fokker for appropriate action: Prior to further flight, repair in accordance with either a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Rijksluchtvaartdienst (RLD) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(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.

Incorporation by Reference

(g) Except as provided by paragraph (d) of this AD, the actions shall be done in accordance with Fokker Service Bulletin SBF50–57–019, dated February 27, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, The Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Dutch airworthiness directive 1998–023/2, dated October 30, 1998.

(h) This amendment becomes effective on January 13, 2000.

Issued in Renton, Washington, on December 21, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33567 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–80–AD; Amendment 39–11482; AD 99–27–01]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–209, –217, –217A, –217C, and –219 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 series turbofan engines, that requires inspection of the 3rd stage and 4th stage low pressure turbine (LPT) blades for shroud notch wear and replacement of the blade if wear limits are exceeded. This amendment is prompted by a report of an uncontained blade failure. The actions specified by this AD are intended to prevent an uncontained blade failure that could result in damage to the airplane.

DATES: Effective February 2, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 2, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770, fax (860) 565-4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 series turbofan engines was published in the **Federal Register** on September 23, 1999 (64 FR 51484). That action proposed to require inspection of the 3rd stage and 4th stage low pressure turbine (LPT) blades for shroud notch wear and replacement of the blade if wear limits are exceeded in accordance with PW Service Bulletin (SB) No. 6224, Revision 2, dated August 27, 1998. That action was prompted by a report of an uncontained blade failure. That condition, if not corrected, could result in an uncontained blade failure that could result in damage to the airplane.

Comments Received

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

From Earlier to Later

One commenter wants to change the cyclic and hourly time limits from whichever occurs first to whichever occurs later. The commenter believes that the later of the cyclic or hourly limits provides an adequate level of safety. The Federal Aviation Administration (FAA) does not concur. The commenter does not provide the substantiating data required to support such a claim. The FAA recognizes that many operators manage their engine fleet safely with alternate inspection techniques and intervals. The FAA is prepared to grant alternative methods of compliance (AMOC) to those operators who submit a request with data substantiating that an acceptable level of safety is maintained using their program through the AMOC provisions of paragraph (d) of this final rule.

SB Publication Date vs. Effective Date of This AD

The same commenter expresses confusion as to how to compute the compliance intervals of this AD; specifically, if the effective date of the AD should be used vs. the publication date of the SB for a compliance baseline. The FAA concurs. For the purpose of this AD, all baseline compliance times should be calculated based upon the effective date of this AD. The FAA has added an explanatory paragraph (c) to this final rule to clarify this issue.

Economic Impact Understated

The same commenter believes that the economic impact of the AD is understated as based upon the numbers presented in the economic analysis of the proposal. Specifically, the commenter believes that the cost effect of hardware removals after failing an inspection should be considered. The FAA concurs and has revised the economic analysis to include an estimated cost of the hardware replacement. The addition of the costs of blade replacement and removals adds an additional $4, 720, 640 per year to the economic impact of the AD.

Request for Terminating Action

Two commenters, including the manufacturer, request that the installation of stronger LPT flange bolts be viewed as terminating action for the inspections required by this AD. The commenters point to a similar terminating action for an inspection requirement for JT8D–1 through –17AR engines, also intended to address a containment issue. The FAA does not concur. While installation of improved LPT bolts will provide some increase in containment capability, the improved bolts alone are not equivalent to the required inspections for preventing an uncontained blade failure in the JT8D–200 series engines. The containment issue for the JT8D–1 through –17AR engines was addressed through installation of improved bolts and a containment shield. At present, there is no similar containment shield available for the JT8D–200 series engines. In addition, the installation of improved LPT bolts is already mandated by AD 99–22–14. The FAA has determined that for the JT8D–200 series engines, an uncontained LPT blade failure must be addressed through both the installation of improved LPT flange bolts and the inspections required by this AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 2,631 engines of the affected design in the worldwide fleet. The FAA estimates that 1,279 engines installed on aircraft of US registry will be affected by this AD, that it will take approximately 1 work hour per engine per year to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact for the required inspections is estimated to be $76,740 per year. It is estimated that 10% of the blade sets will fail the inspection per year and require replacement. The average cost for a new blade set is $35,500. The new blades take approximately 23 work hours to install and the average labor rate is $60 per work hour. Based on these figures, the annual replacement cost impact of the AD on US operators per year is $4,720,640. Therefore the total annual cost impact of the AD on US operators is 4,797,380.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect 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, it is determined that this final rule does not have federalism implications under Executive Order (EO) 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–27–01 Pratt & Whitney: Amendment 39–11482. Docket 98–ANE–80–AD.

Applicability: Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 series turbofan engines, installed on, but not limited to, McDonnell Douglas MD–80 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/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 as indicated, unless accomplished previously.

To prevent an uncontained blade failure that could result in damage to the airplane, accomplish the following:

Inspection

(a) For JT8D–209, –217, and –217A engines, perform the 3rd and 4th stage low pressure turbine (LPT) blade torque inspections in accordance with the intervals and procedures described in PW Service Bulletin (SB) No. 6224, Revision 2, dated August 27, 1998, Accomplishment Instructions, Part 1, A(1) through B(3).

(b) For JT8D–217C and –219 engines, perform the 4th stage LPT blade torque inspection in accordance with the intervals and procedures described in PW SB No. 6224, Revision 2, dated August 27, 1998, Accomplishment Instructions, Part 2, C(1) through C(3).

Effective Date for Computing Compliance Intervals

(c) For the purpose of this AD, use the effective date of this AD for computing compliance intervals whenever PW SB No. 6224, Revision 2, dated August 27, 1998, refers to the publication date of the SB.

Alternative Methods of Compliance

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

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

Ferry Flights

(e) 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 aircraft to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions required by this AD shall be done in accordance with Pratt & Whitney Service Bulletin No. 6224, Revision 2, dated August 27, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770, fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on February 2, 2000.

Issued in Burlington, Massachusetts, on December 20, 1999.

David A. Downey,

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

[FR Doc. 99–33566 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–30–AD; Amendment 39–11485; AD 99–27–04]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Limited Dart Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Rolls-Royce Limited Dart series turboprop engines. This amendment requires a one-time visual inspection of the interior of the switch to determine the type of low torque switch, and removal from service of unapproved Klixon low torque switches and replacement with serviceable parts. This amendment is prompted by the discovery of unapproved low torque switches in fleet operation. The actions specified by this AD are intended to prevent possible low torque switch failure, which could result in failure of a propeller to auto-feather following an engine power loss, resulting in possible loss of control of the airplane due to high asymmetric drag.

DATES: Effective February 28, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 28, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Rolls-Royce Limited, Attn: Dart Engine Service Manager, East Kilbride, Glasgow G74 4PY, Scotland; telephone: +44 1355–220–200, fax: +44 1141–778–432. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Rolls-Royce Limited (R-R) Dart 506, 510, 511, 514, 525, 526, 529, 530, 531, 532, 535, 542, and 552 series turboprop engines was published in the **Federal Register** on August 26, 1999 (64 FR 46609). That action proposed to require a one-time visual inspection of the interior of the switch to determine the type of low torque switch within 3 months after the effective date of the AD, and removal from service of unapproved Klixon low torque switches and replacement with approved low torque switches. That action was prompted by AD 002–12–96, issued by the Civil Aviation Authority of the United Kingdom. That condition, if not corrected, could result in possible low torque switch failure, which could result in failure of a propeller to auto-feather following an engine power loss, resulting in possible loss of control of the airplane due to high asymmetric drag.

No Comments Received

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

Economic Analysis

There are approximately 890 engines of the affected design in the worldwide fleet. The FAA estimates that 139 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $12,500 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,754,180.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect 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, it is determined that this final rule does not have federalism implications under Executive Order (EO) 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–27–04 Rolls-Royce Limited: Amendment 39–11485. Docket 99–NE–30–AD.

Applicability: Rolls-Royce Limited (R-R) Dart 506, 510, 511, 514, 525, 526, 529, 530, 531, 532, 535, 542, and 552 series turboprop engines, installed on but not limited to Gulfstream Aerospace Corp. G–159, British Aerospace HS 748, Fokker Aircraft F.27, Mitsubishi Heavy Industries YS-11, General Dynamics (Convair) 640 and 600 series, and Vickers Armstrongs (Aircraft Limited) Viscount.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a propeller to auto-feather following an engine power loss, resulting in possible loss of control of the airplane due to high asymmetric drag, accomplish the following:

Inspection

(a) Within 3 months after the effective date of this AD, accomplish the following in accordance with the Action section of R–R Service Bulletin (SB) No. Da61–13, dated December 1996:

(1) Remove the switch cover, visually inspect the interior of the switch and replace the switch cover, all in accordance with the accomplishment instructions of the SB.

(2) If a Klixon low torque switch, part number (P/N) 6PS–25–1, is installed, prior to further flight remove the Klixon low torque switch from service and replace with an approved low torque switch.

Alternative Methods of Compliance

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

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

Ferry Flights

(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.

Incorporation by Reference

(d) The actions required by this AD shall be done in accordance with Rolls-Royce Service Bulletin No. Da61–13, dated December 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 Rolls-Royce Limited, Attn: Dart Engine Service Manager, East Kilbride, Glasgow G74 4PY, Scotland; telephone: +44 1355–220–200, fax: +44 1141–778–432. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(e) This amendment becomes effective on February 28, 2000.

Issued in Burlington, Massachusetts, on December 21, 1999.

David A. Downey,

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

[FR Doc. 99–33565 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–24–AD; Amendment 39–11483; AD 99–27–02]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company 170, 172, 175, and 177 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Cessna Aircraft Company (Cessna) 170, 172, 175, and 177 series airplanes. This AD requires replacing certain fuel selector valve cams or fuel selector valves that Cessna shipped from December 6, 1998, through May 10, 1999, and prevents the future installation of these fuel selector valve cams or fuel selector valves.

This AD allows the pilot to check the logbooks to determine whether one of these fuel selector valve cams or fuel selector valves is installed. This AD results from reports from Cessna that fuel selector valve cams and fuel selector valves were manufactured with control shafts that will not allow both tanks to supply fuel to the engine in certain situations. The actions specified by this AD are intended to prevent an inadequate supply of fuel from reaching the engine because of a fuel selector valve cam or fuel selector valve. This could result in an emergency landing or loss of control of the airplane.

DATES: Effective January 21, 2000.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of January 21, 2000.

The FAA must receive any comments on this rule on or before February 14, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–24–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

You may get the service information referenced in this AD from the Cessna Aircraft Company, Product Support, P. O. Box 7706, Wichita, Kansas 67277; telephone: (316) 571–5800; facsimile: (316) 942–9008. You may examine this information at the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–24–AD, 901 Locust, Room 506, 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. Paul O. Pendleton, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Rm 100, Mid-Continent Airport, Wichita, Kansas, 67209; telephone: (316) 946–4143; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? Cessna manufactured fuel selector valve cams and fuel selector valves that may have control shafts that will not allow both tanks to supply fuel to the engine when the pilot selects the ‘‘Both On’’ position. These fuel selector valve cams and fuel selector valves can be installed in certain Cessna 170, 172, 175, and 177 series airplanes (specific models listed in the AD). The ‘‘Both On’’ position is required for takeoff and landing on most of the affected airplanes, in order to supply fuel to the engine at an acceptable rate.

What is the unsafe condition? These fuel selector valve cams or fuel selector valves, when installed, could result in an inadequate supply of fuel to the engine and result in an emergency landing or loss of control of the airplane.

What is the cause of the problem? Quality control. Cessna shipped the fuel selector valve cams and fuel selector valves during the time of December 6, 1998, through May 10, 1999.

Relevant Service Information

Is there service information that applies to this subject? Yes. Cessna has issued Service Bulletin SEB99–7, dated June 7, 1999.

What are the provisions of this service bulletin? The service bulletin includes the following:

—A list of all the airplanes where these fuel selector valve cams and fuel selector valves are eligible for installation;

—The material and parts necessary to replace the fuel selector valve cams and fuel selector valves;

—Instructions for accomplishing the fuel selector valve cam and fuel selector valve replacement; and

—Information on warranty credit.

The FAA's Determination and an Explanation of the Provisions of the AD

What has the FAA decided? After examining the circumstances and reviewing all available information related to the incidents described above, including the relevant service information, the FAA has determined that:

—An unsafe condition exists or could develop on certain Cessna 170, 172, 175, and 177 series airplanes;

—The above-referenced fuel selector valve cams and fuel selector valves should be removed from service and future installation should be prohibited; and

—AD action should be taken to prevent an inadequate supply of fuel from reaching the engine because of a fuel selector valve cam or fuel selector valve, which could result in an emergency landing or loss of control of the airplane.

What does this AD require? This AD requires replacing certain fuel selector valve cams and fuel selector valves that Cessna shipped from December 6, 1998, through May 10, 1999, and prevents the future installation of these fuel selector valve cams and fuel selector valves. This AD allows the pilot to check the logbooks to determine whether one of these fuel selector valve cams or fuel selector valves is installed.

What is the compliance time of this AD? Within 10 hours time-in-service (TIS) after the effective date of this AD. Since a situation exists that requires the immediate adoption of this regulation, the FAA finds that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, the FAA invites comments on this rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption ADDRESSES. The FAA will consider all comments received on or before the closing date. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

The FAA is re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clearer, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov.*

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 99–CE–24–AD." We will date stamp and mail the postcard back to you.

Regulatory Impact

These regulations will not have a substantial direct effect 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, the FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. We determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If the FAA determines that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, we will prepare a final regulatory evaluation and place it in the Rules Docket (otherwise, an evaluation is not required). You may obtain a copy of this evaluation, if filed, from the Rules Docket.

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:

99–27–02 Cessna Aircraft Company: Amendment 39–11483; Docket No. 99–CE–24–AD.

(a) *What airplanes are affected by this AD?* The following airplane models and serial numbers that are:

(1) certificated in any category; and

(2) equipped with Fuel Selector Valve Cam part number 0513123, or Fuel Selector Valve part number 0513120–5, 0513120–6, 0513120–8, 0513120–9, or 0513120–200; that Cessna shipped from December 6, 1998, through May 10, 1999:

Model	Serial No.
170B	20267 through 20999.
170B	25000 through 27169.
170B	609 and 19401.
172	28000 through 29999.
172	36000 through 36999.
172	46001 through 46754.
172	610, 612, and 615.
172A	46755 through 47746.
172A	622 and 625.
172B	17247747 through 17248734.
172B	630.
172C	17248735 through 17249544.
172D	17249545 through 17250572.
172E	17250573 through 17251822.
172E	639.
172F	17251823 through 17253392.
172G	17253393 through 17254892.
172H	17254893 through 17256492.
172H	17256494 through 17256512.
172H	638.
172I	17256513 through 17257161.
172K	17257162 through 17258486.
172K	17258487 through 17259223.
172L	17259224 through 17259903.
172L	17259904 through 17260758.
172M	17260759 through 17261444.

Model	Serial No.
172M	17261446 through 17261577.
172M	17261579 through 17261898.
172M	17256493.
172M	17261899 through 17263458.
P172D	P17257120 through P17257188.
P172E (T41)	R172–0001 through R172–0335.
R172F (T41)	R172–0336 through R172–0409.
R172G (T41)	R1720410 through R1720444.
R172H (T41)	R1720445 through R1720494.
R172H (T41)	R1720495 through R1720546.
R172H (T41)	R1720547 through R1720620.
R172J	P17257189.
R172K	R1722000 through R1722724.
R172K	R1722725 through R1722929.
R172K	R1722930 through R1723199.
R172K	680.
R172K	R1723200 through R1723397.
R172K	R1723397 through R1723399.
R172K	R1723400 through R1723454.
175	28700A
175A	619.
175C	17557003 through 17557119.
177	17700001.
177	17700003 through 17701164.
177	661.
177A	17701165 through 17701370.
177B	17701371 through 17701471.
177B	17701473 through 17701530.
177B	17701531 through 17701633.
177B	17700002.
177B	17701634 through 17701773.
177B	17701774 through 17701973.
177B	17701974 through 17702123.
177B	17702124 through 17702313.
177B	17701472.
177B	17702314 through 17702522.
177B	17702523 through 17702672.
177B	17702673 through 17702752.
F172D	F172–0001 through F172–0018.
F172E	F172–0019 through F172–0085.
F172F	F172–0086 through F172–0179.
F172G	F172–0180 through F172–0319.
F172H	F172–0320 through F172–0431.
F172H	F172–0436 through F172–0442.
F172H	F172–0444 through F172–0446.
F172H	F172–0432 through F172–0435.
F172H	F172–0443.
F172H	F172–0447 through F172–0559.
F172H	F172–0560 through F172–0654.
F172H	F17200655 through F17200754.
F172K	F17200755 through F17200804.
F172L	F17200805 through F17200904.
F172M	F17200905 through F17201034.
F172M	F17201035 through F17201234.
FP172	FP172–0001 through FP172–0003.
FR172E	FR17200001 through FR17200060.
FR172F	FR17200061 through FR17200145.
FR172G	FR17200146 through FR17200225.
FR172H	FR17200226 through FR17200275.
FR172H	FR17200276 through FR17200350.
FR172J	FR17200351 through FR17200440.
FR172J	FR17200441 through FR17200530.
FR172J	FR17200531 through FR17200559.
FR172J	FR17200560 through FR17200590.
FR172K	FR17200591 through FR17200620.
FR172K	FR17200621 through FR17200630.
FR172K	FR17200631 through FR17200655.
FR172K	FR17200656 through FR17200665.
FR172K	FR17200666 through FR17200675.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register.

(c) *What problem does this AD address?* The affected fuel selector valve cams or fuel selector valves, when installed, could result in an inadequate supply of fuel to the engine. This could then result in an emergency landing or loss of control of the airplane.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the replacement, records check, and/or installation prohibition requirements explained below, as applicable:

(1) Replacement Requirement.

(i) *What action is required?* Replace any Fuel Selector Valve Cam part number 0513123, or Fuel Selector Valve part number 0513120–5, 0513120–6, 0513120–8, 0513120–9, or 0513120-200, that Cessna shipped from December 6, 1998, through May 10, 1999. Paragraphs (d)(2)(i) and (d)(2)(ii) of this AD provide procedures for checking the maintenance records to determine if one of these fuel selector valve cams or fuel selector valves is installed.

(ii) *What procedures must be used?* The procedures contained in Cessna Service Bulletin SEB99–7, dated June 7, 1999, and the applicable maintenance manual.

(iii) *When is the action required?* Within the next 10 hours TIS after the effective date of this AD.

(2) Maintenance Records Check.

(i) *May the pilot check the maintenance records to determine if this AD applies?* Yes. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the maintenance records to determine whether one of the affected fuel selector valve cams or fuel selector valves was installed after December 6, 1998.

(ii) *What if the maintenance records show that no affected fuel selector valve cam or fuel selector valve is installed?* If, by checking the maintenance records, the pilot can positively show that a Fuel Selector Valve Cam part number 0513123, or Fuel Selector Valve part number 0513120–5, 0513120–6, 0513120–8, 0513120–9, or 0513120-200, is not installed or was installed prior to December 6, 1998, then the replacement requirement of paragraph (b) of this AD does not apply. You must make an entry into the aircraft records that shows compliance with this portion of the AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(3) Installation Prohibition Requirements.

(i) *What prevents these parts from being installed in the future?*

You may not install a Fuel Selector Valve Cam part number 0513123 or Fuel Selector Valve part number 0513120–5, 0513120–6, 0513120–8, 0513120–9, or 0513120–200; that Cessna shipped from December 6, 1998, through May 10, 1999, in any of the affected airplanes.

(ii) *When does this prohibition go into effect?* As of the effective date of this AD.

(e) *Can I comply with this AD in any other way?* Yes.

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Wichita Aircraft Certification Office, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager.

(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 (e)(1) 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.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact the Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas, 67209; telephone: (316) 946–4143; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Yes. You must accomplish the actions required by this AD in accordance with Cessna Service Bulletin SEB99–7, dated June 7, 1999. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from the Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on January 21, 2000.

Issued in Kansas City, Missouri, on December 20, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33564 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–46]

Amendment to Class E Airspace; Mountain View, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Mountain View, MO.

DATES: The direct final rule published at 64 FR 59615 is effective on 0901 UTC, February 24, 2000.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on November 3, 1999 (64 FR 59615). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 24, 2000. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on December 13, 1999.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–33798 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–45]

Amendment to Class E Airspace; Norfolk, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Norfolk, NE.

DATES: The direct final rule published at 64 FR 56251 is effective on 0901 UTC, February 24, 2000.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on October 19, 1999 (64 FR 56251). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 24, 2000. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on December 13, 1999.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–33797 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–52]

Amendment to Class E Airspace; Marshalltown, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Marshalltown Municipal Airport, Marshalltown, IA. A review of the Class E airspace area for Marshalltown Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

In addition, the coordinates for the Elmwood VOR have been revised and are included in this document.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), revise the coordinates for the Elmwood VOR, and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, April 20, 2000.

Comments for inclusion in the Rules Docket must be received on or before February 10, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 99–ACE–52, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the

Class E airspace at Marshalltown, IA. A review of the Class E airspace for Marshalltown Municipal Airport, IA, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Marshalltown Municipal Airport, IA, will provide additional controlled airspace for aircraft operating under IFR, revise the Elmwood VOR coordinates, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ''ADDRESSES.'' All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–ACE–52.'' The post card will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect 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, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

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

* * * * *

ACE IA E5 Marshalltown, IA [Revised]

Marshalltown Municipal Airport, IA
(lat. 42°06′46″N., long. 92°55′04″W.)
Elmwood VOR
(lat. 42°06′41″N., long. 92°54′32″W.)
Marshalltown NDB
(lat. 42°06′36″N., long. 92°55′01″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Marshalltown Municipal Airport and within 2.6 miles each side of the 135° radial of the Elmwood VOR extending from the 6.4-mile radius to 7 miles southeast of the airport and within 2.6 miles each side of the 313° bearing from the Marshalltown NDB extending from the 6.4-mile radius to 7 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on December 13, 1999.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–33796 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–47]

Amendment to Class E Airspace; Fredericktown, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Fredericktown Regional Airport, Fredericktown, MO. The FAA has developed Global Positioning System (GPS) Runway (RWY) 1, GPS RWY 19 Standard Instrument Approach Procedures (SIAPs), and amended VHF Omnidirectional Range (VOR) RWY 19 SIAP to serve Fredericktown Regional Airport, MO. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the GPS RWY 1, GPS RWY 19, and VOR RWY 19 SIAPs in controlled airspace.

In addition, a minor revision to the Airport Reference Point (ARP) coordinates is included in this document.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing GPS RWY 1, GPS RWY 19 and VOR RWY 19 SIAPs, revise the ARP coordinates, and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, April 20, 2000.

Comments for inclusion in the Rules Docket must be received on or before February 2, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 99–ACE–47, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 1, GPS RWY 19 SIAPs, and amended the VOR RWY 19 SIAP to serve the Fredericktown Regional Airport, MO. The amendment to Class E airspace at Fredericktown, MO, will provide additional controlled airspace at and above 700 feet AGL in order to contain the SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules (IFR). The amendment at Fredericktown Regional Airport, MO, will provide additional controlled airspace for aircraft operating under IFR. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–ACE–47.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect 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, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

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

* * * * *

ACE MO E5 Fredericktown, MO [Revised]

Fredericktown Regional Airport, MO
(lat. 37°36′20″N., long. 90°17′14″W.)
Farmington VORTAC
(lat. 37°40′25″N., long. 90°14′02″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Fredericktown Regional Airport and within 2.4 miles each side of the Farmington VORTAC 032° radial extending from the 6.4-mile radius of the Fredericktown Regional Airport to 7 miles northeast of the Farmington VORTAC.

* * * * *

Issued in Kansas City, MO, on December 14, 1999.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–33795 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–49]

Amendment to Class E Airspace; Cameron, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Cameron Memorial Airport, Cameron, MO. The FAA has developed Global Positioning System (GPS) Runway (RWY) 17, GPS RWY 35 Standard Instrument Approach Procedures (SIAPs) and amended the Nondirectional Radio Beacon (NDB) RWY 35 SIAP to serve Cameron Memorial Airport, MO. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the GPS RWY 17, GPS RWY 35, and NDB RWY 35 SIAPs in controlled airspace.

In addition, a minor revision to the coordinates for the Cameron Memorial Airport Reference Point (ARP) is included in this document.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing GPS RWY 17, GPS RWY 35, and NDB RWY 35 SIAPs, amend the ARP coordinates, and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, April 20, 2000.

Comments for inclusion in the Rules Docket must be received on or before January 31, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 99–ACE–49, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 17, GPS RWY 35 SIAPs and amended the NDB RWY 35 SIAP to serve the Cameron Memorial Airport, MO. The amendment to Class E airspace at Cameron, MO, will provide additional controlled airspace at and above 700 feet AGL in order to contain the SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The amendment at Cameron Memorial Airport, MO, will provide additional controlled airspace for aircraft operating under IFR. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–ACE–49.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect 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, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 199, is amended as follows:

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

* * * * *

ACE MO E5 Cameron, MO [Revised]

Cameron Memorial Airport, MO
(lat. 39°43′39″N., long. 94°16′35″W.)
Cameron NDB
(lat. 39°43′45″N., long. 94°16′20″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Cameron Memorial Airport and within 2.5 miles each side of the Cameron NDB 187° bearing extending from 6.4-mile radius of the Cameron Memorial Airport to 7 miles south of the Cameron NDB.

* * * * *

Issued in Kansas City, MO, on December 14, 1999.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–33794 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–50]

Amendment to Class E Airspace; Iowa City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Iowa City Municipal Airport, Iowa City, IA. A review of the Class E airspace area for Iowa City Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

In addition, a minor revision to the Airport Reference Point (ARP) is included in this document.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), revise the ARP, and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, April 20, 2000.

Comments for inclusion in the Rules Docket must be received on or before February 8, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 99–ACE–50, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Iowa City, IA. A review of the Class E airspace for Iowa City Municipal Airport, IA, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Iowa City Municipal Airport, IA, will provide additional controlled airspace for aircraft operating under IFR, revise the ARP, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–ACE–50.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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, it is determined that this final rule does not have sufficient federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

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

* * * * *

ACE IA E5 Iowa City, IA [Revised]

Iowa City Municipal Airport, IA
(lat. 41°38′21″ N., long. 91°32′47″ W.)
Iowa City VORTAC
(lat. 41°31′08″ N., long. 91°36′48″ W.)
Hawkeye NDB
(lat. 41°37′55″ N., long. 91°32′34″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Iowa City Municipal Airport and within 1.8 each side of the 024° radial of the Iowa City VORTAC extending from the 6.5-mile radius to the VORTAC and within 2.6 miles each side of the 276° bearing from the Hawkeye NDB extending from the 6.5-mile radius to 7.4 miles west of the airport.

* * * * *

Issued in Kansas City, MO, on December 16, 1999.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–33790 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–21]

Establishment of Class E Airspace; Okeechobee, FL.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Okeechobee, FL. A Global Positioning System (GPS) Runway (RWY) 4 Standard Instrument Approach Procedure (SIAP) has been developed for Okeechobee County Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Okeechobee County Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

EFFECTIVE DATE: 0901 UTC, February 24, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On November 10, 1999, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace at Okeechobee, FL (64 FR 217). This action provides adequate Class E airspace for IFR operations at Okeechobee County Airport. Designations for Class E airspace extending upward from 700 feet or more above the surface of the earth are published in FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed this document will be published subsequently in the Order.

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

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Okeechobee, FL. A GPS RWY 4 SIAP has been developed for Okeechobee County Airport. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Okeechobee County Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with the publication of the SIAP.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

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

* * * * *

ASO FL E5 Okeechobee, FL [New]

Okeechobee County Airport
(Lat. 27°15′46″ N, long. 80°50′59″ W)

That airspace extending upward from 700 feet or more above the surface within a 6.5-mile radius of Okeechobee County Airport.

* * * * *

Issued in College Park, GA, on December 14, 1999.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–33793 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF DEFENSE

Office of the Inspector General

32 CFR Part 312

Privacy Act; Implementation

AGENCY: Office of the Inspector General, DoD.

ACTION: Final rule.

SUMMARY: The Office of the Inspector General is amending an existing exemption rule for a Privacy Act system of records. The amendment is administrative in nature. The system name is being changed to reflect changes made to the system of records notice.

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph E. Caucci at telephone (703) 604–9786.

SUPPLEMENTARY INFORMATION:

Executive Order 12866.

It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act

It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act

It has been determined that this Privacy Act rule for the Department of

Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

List of Subjects in 32 CFR Part 312

Privacy.

1. The authority citation for 32 CFR part 312 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 312.12, is amended by revising paragraphs (f)(1) and (f)(2) as follows:

§ 312.12 Exemptions.

(f) *System identifier:* CIG–15.

(1) *System name:* Departmental Inquiries Case System.

(2) *Exemption:* Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source. Any portions of this system which fall under the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subsection of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I).

* * * * *

Dated: December 22, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–33699 Filed 12–28–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[USCG–1999–5938]

Safety Zones, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substsantive rules adopted by the Coast Guard and temporarily effective between January 1, 1999 and September 30, 1999 which were not published in the **Federal Register**. This notice lists temporary local regulations, security zones, and safety zones of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This notice lists temporary Coast Guard regulations that became effective and were terminated between January 1, 1999 and September 30, 1999.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. Documents indicated in this notice will be available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20593–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may electronically access the public docket for this notice on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Lieutenant Junior Grade Bruce Walker, Office of Regulations and Administrative Law, telephone (202) 267–6233. For questions on viewing, or on submitting material to the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation (202) 866–9329.

SUPPLEMENTARY INFORMATION: District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to vessels,, ports, or waterfront facilities to prevent injury or damage. Special local regulations are issued to enhance the safety of participants and spectators at regattas and other marine events. Timely publication of these regulations in the **Federal Register** is often precluded when a regulation responds to an emergency, or when an event occurs without sufficient advance notice. However, the affected public is informed of these regulations through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the regulation. Because mariners are notified by Coast Guard officials on-scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expenses on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, security zones, and safety zones. Permanent regulations are not included in this list because they are published in their entirely in the **Federal Register**. Temporary regulations may also be published in their entirely if sufficient time is avaiable to do so before they are placed in effect or terminated. The safety zones, special local regulations and security zones listed in this notice have been exempted from review under Executive Order 12866 because of their emergency nature, or limited scope and temporary effectiveness.

The following regulations were placed in effect temporarily during the period January 1, 1999 and September 30, 1999, unless otherwise indicated.

Dated: December 22, 1999.

Pamela M. Pelcovits,

Chief, Office of Regulations and Administrative Law.

1ST QUARTER 1999 COTP QUARTERLY REPORT

COTP Docket	Location	Type	Effective Date
CORPUS CHRISTI 99–001	Corpus Christi, TX	Safety zone	1/18/99
CORPUS CHRISTI 99–002	Brownsville Ship Channel, Brownsville, TX	Safety zone	2/12/99
CORPUS CHRISTI 99–003	Corpus Christi, TX	Safety zone	2/12/99
GUAM 98–005	Apra Outer Harbor, Guam	Safety zone	1/13/99
GUAM 98–006	Apra Outer Harbor, Guam	Safety zone	1/27/99

1ST QUARTER 1999 COTP QUARTERLY REPORT—Continued

COTP Docket	Location	Type	Effective Date
JACKSONVILLE 98–086	Atlantic Ocean, Mayport, FL	Safety zone	1/2/99
LOUISVILLE 99–001	Ohio River, M. 530.5 to 532	Safety zone	1/24/99
LOUISVILLE 99–002	Kentucky River, Owens Country, Ky	Safety zone	2/20/99
MOBILE 99–001	Gulf of Mexico	Safety zone	1/29/99
NEW ORLEANS 99–001	Lwr Mississippi River, M. 94 to 96	Safety zone	2/15/99
NEW ORLEANS 99–002	Lwr Mississippi River, M. 226 to 237	Safety zone	2/9/99
NEW ORLEANS 99–003	Lwr Mississippi River, M. 47 to 54	Safety zone	2/28/99
NEW ORLEANS 99–004	Lwr Mississippi River, M. 229 to 230.5	Safety zone	3/5/99
NEW ORLEANS 99–005	Lwr Mississippi River, M. 047 to 054	Safety zone	3/6/99
PRINCE WILLIAM SOUND 99–001	Valdez, AK	Safety zone	3/22/99
SAN FRANCISCO BAY 99–001	San Francisco, CA	Safety zone	3/5/99
SAN FRANCISCO BAY 99–003	San Francisco, CA	Safety zone	3/16/99
SAN FRANCISCO BAY 99–004	San Francisco, CA	Safety zone	3/15/99
SAN FRANCISCO BAY 99–005	San Francisco, CA	Safety zone	3/13/99
SAN FRANCISCO BAY 99–006	San Francisco, CA	Security zone	3/19/99
SAN JUAN 99–005	San Juan, Puerto Rico	Safety zone	1/10/99
TAMPA 99–009	Tampa Bay, FL	Safety zone	1/25/99
WESTERN ALASKA 99–001	Northern Edge ’99, Resurrection Bay, Alaska	Safety zone	3/7/99

1ST QUARTER 1999 DISTRICT QUARTERLY REPORT

District Docket	Location	Type	Effective date
01–99–005	East River, New York	Security zone	1/21/99
01–99–011	Portsmouth, NH	Security zone	2/18/99
01–99–013	Boston Harbor, Boston, MA	Safety zone	3/1/99
01–99–014	Boston Harbor, Boston, MA	Safety zone	3/2/99
01–99–019	Fall River, MA	Safety zone	3/13/99
01–99–021	Boston Harbor, Boston, MA	Safety zone	3/2/99
01–99–025	Boston Harbor, Boston, MA	Safety zone	3/9/99
01–99–026	Boston Harbor, Boston, MA	Safety zone	3/28/99
05–99–002	Cape Fear River, North Carolina	Safety zone	1/7/99
05–99–007	Camp Lejeune, North Carolina	Safety zone	2/9/99
05–99–009	Baltimore, MD	Safety zone	3/27/99
05–99–017	Croatan Sound, North Carolina	Safety zone	3/29/99
07–99–006	Great Bay, St. Thomas, U.S:V.I.	Special local	1/29/99
07–99–012	Bay Vew, Catano, PR	Special local	3/21/99
08–99–003	Knoxville, TN	Special local	1/99/99
09–99–005	Lake Ontario, Oswego, New York	Safety zone	2/27/99

2ND QUARTER 1999 COTP QUARTERLY REPORT

COTP Docket	Location	Type	Effective Date
CORPUS CHRISTI 99–004	Port Isabel, TX	Safety zone	4/5/99
GUAM 99–008	Agat Outer Harbor, Guam	Safety zone	4/29/99
GUAM 99–009	Agat Bay, Guam	Safety zone	5/12/99
GUAM 99–010	Cocos Lagoon, Guam	Safety zone	6/11/99
GUAM 99–012	Cocos Lagoon, Guam	Safety zone	6/2/99
HOUSTON-GALVESTION 99-002	Bayport, TX	Safety zone	4/19/99
LA/LB 99–004	Huntington Beach, CA	Safety zone	6/13/99
MIAMI 99–021	Palm Beach, FL	Safety zone	4/30/99
MILWAUKEE 99–009	Lake Michigan, Sheboygan, WI	Safety zone	5/14/9
NEW ORLEANS 99–006	Lwr Mississppi River, M. 94 to 96	Safety zone	4/6/99
NEW ORLEANS 99–007	Lwr Mississippi River, M.94 to 96	Safety zone	4/10/99
NEW ORLEANS 99–008	Lwr Mississippi River, M. 94 to 96	Safety zone	4/12/99
NEW ORLEANS 99–010	Mississippi, M. 94 to 96	Safety zone	5/30/99
PADUCAH 99–004	Ohio River, M. 917.5 to 919.5	Safety zone	5/6/99
SAN FRANCISCO BAY 99–007	San Francisco Bay, CA	Safety zone	4/18/99
SAN FRANCISCO BAY 99–008	Mare Island Strait, CA	Safety/security zone	4/30/99
SAN FRANCISCO BAY 99–009	San Francisco Bay, CA	Safety zone	5/12/99
SAN FRANCISCO BAY 99–010	San Francisco Bay, San Francisco, CA	Safety zone	5/22/99
SAN FRANCISCO BAY 99–011	San Francisco Bay, San Francisco, CA	Safety zone	5/22/99
SAN FRANCISCO BAY 99–012	Suisun Bay, CA	Safety zone	6/22/99
SOUTHEAST ALASKA 99–002	Tongass Narrows, Ketchikan, AK	Safety zone	5/8/99
TAMPA 99–043	Tampa Bay, FL	Safety zone	6/16/99

2nd Quarter 1999 District Quarterly Report

District docket	Location	Type	Effective date
01–99–035	Portsmouth, NH	Safety zone	4/9/99
01–99–037	Hudson River, Manhattan, NY	Safety zone	6/25/99
01–99–043	Bath, ME	Safety zone	4/17/99
01–99–045	Long Island, New York	Safety zone	4/22/99
01–99–046	Manhattan, New York	Security zone	4/21/99
01–99–058	Chelsea, MA	Safety zone	5/11/99
01–99–063	Bangor, ME	Safety zone	5/13/99
01–99–065	East River, New York	Security zone	5/19/99
01–99–091	East and Hudson Rivers, New York	Security zone	6/7/99
01–99–097	Rondout Creek, New York	Safety zone	6/27/99
01–99–098	Gloucester, MA	Safety zone	6/27/99
01–99–099	New York Harbor, Upper Bay	Safety zone	6/25/99
01–99–113	Sherwood Park, Westport, CT	Safety zone	6/28/99
01–99–117	Boston, MA	Security zone	6/25/99
01–99–119	Saugatuck River, Saugatuck, CT	Safety zone	6/28/99
05–99–043	Cape Henlopen State Park, DA	Safety zone	5/7/99
05–99–023	Chestertown, MD	Safety zone	4/10/99
05–99–024	Elizabeth River, Virginia	Security zone	4/13/99
05–99–025	Baltimore, MD	Special local	4/24/99
05–99–027	Willoughby Bay, Norfolk, VA	Security zone	4/17/99
05–99–028	Baltimore Inner Harbor, Baltimore, Maryland	Special local	5/2/99
05–99–029	Sharptown, Maryland	Special local	5/1/99
05–99–030	Thimble Shoal Channel, Virginia	Safety zone	4/30/99
05–99–031	Elizabeth River, Norfolk, VA	Safety zone	5/5/99
05–99–032	Thimble Shoal Channel, Virginia	Safety zone	5/6/99
05–99–035	Harbor Park, Norfolk, VA	Safety zone	5/15/99
05–99–042	Elizabeth River, Chesapeake, VA	Safety zone	5/28/99
05–99–046	Harbor Park, Norfolk, VA	Safety zone	6/23/99
07–99–017	Fort Lauderdale, FL	Special local	4/30/99
07–99–020	Bahia de Mayaquez, Puerto Rico	Special local	4/18/99
07–99–029	Saint Thomas, USVI	Special local	5/1/99
07–99–031	Saint Thomas, USVI	Special local	5/5/99
07–99–032	Caneel Bay, Saint John, USVI	Special local	5/15/99
08–99–043	Corpus Christi, TX	Special local	6/19/99
09–99–010	Lake Muskegon, Muskegon, MI	Safety zone	4/24/99
09–99–011	Washington Township, Ohio	Safety zone	6/26/99
09–99–012	Tibbets Point, New York	Safety zone	4/29/99
09–99–014	Lake Michigan, Chicago, IL	Safety zone	5/2/99
09–99–015	Lake Macatawa, Holland, MI	Safety zone	5/7/99
09–99–016	Lake Muskegon, Muskegon, MI	Safety zone	5/22/99
09–99–020	Lake Michigan, Chicago, IL	Safety zone	5/29/99
09–99–022	City Pier—Bayfield, Wisconsin—Lake Superior	Safety zone	5/29/99
09–99–023	Milwaukee, WI	Safety zone	6/24/99
09–99–025	Lake Muskegon, Muskegon, MI	Safety zone	6/10/99
09–99–027	Lake Macatawa, Holland, MI	Safety zone	6/19/99
09–99–028	Black River, South Haven, MI	Safety zone	6/19/99
09–99–034	Presque Isle Bay, Erie, PA	Safety zone	6/26/99
09–99–040	Muskegon Lake, Muskegon, MI	Safety zone	6/24/99
13–99–010	Renton, WA	Safety zone	4/24/99
13–99–012	Willamette River, Portland, Oregon	Safety zone	5/7/99
13–99–014	Pacific Coast, Washington	Safety zone	5/21/99
13–99–015	Neah Bay, Neah Bay, WA	Safety zone	5/21/99
13–99–016	Neah Bay, Neah Bay, WA	Safety zone	5/24/99
13–99–017	Willamette River, Portland, OR	Safety zone	6/4/99
13–99–023	Bellingham, Washington	Safety zone	6/14/99
13–99–029	Lake Washington, WA	Safety zone	6/26/99

3rd Quarter 1999 COTP Quarterly Report

COTP docket	Location	Type	Effective date
CORPUS CHRISTI 99–006	Intracoastal Waterway, TX	Safety Zone	8/22/99
GUAM 99–013	Apra Harbor, Guam	Safety Zone	7/12/99
GUAM 99–014	Apra Harbor, Guam	Safety Zone	8/11/99
GUAM 99–015	Apra Harbor, Guam	Safety Zone	8/23/99
JACKSONVILLE 99–046	St. Johns River, Jacksonville, FL	Safety Zone	7/4/99
JACKSONVILLE 99–049	Intracoastal Waterway, Melbourne, FL	Safety Zone	7/4/99
LOUISVILLE 99–006	Ohio River	Safety Zone	9/2/99
LOUISVILLE 99–007	Ohio River, M. 265 to 469	Safety Zone	8/16/99
LOUISVILLE 99–008	Ohio River, M. 556.5 to 558.5	Safety Zone	9/30/99
NEW ORLEANS 99–017	Mississippi River, M. 94 to 96	Safety Zone	8/19/99

3RD QUARTER 1999 COTP QUARTERLY REPORT—Continued

COTP docket	Location	Type	Effective date
NEW ORLEANS 99–018	Mississippi River, above Head of Passes	Safety Zone	8/30/99
NEW ORLEANS 99–019	Harvery Canal	Safety Zone	9/5/99
NEW ORLEANS 99–020	Mississippi River, above Head of Passes	Safety Zone	8/31/99
NEW ORLEANS 99–021	Mississippi River, above Head of Passes	Safety Zone	9/9/99
NEW ORLEANS 99–023	Lower Mississippi River, M. 382 to 385	Safety Zone	9/22/99
NEW ORLEANS 99–025	Lower Mississippi River, M. 342 to 345	Safety Zone	9/28/99
SAN DIEGO 99–005	San Diego, CA	Safety Zone	8/4/99
SAN DIEGO 99–009	San Diego, CA	Safety Zone	9/5/99
SAN DIEGO 99–010	Lower Colorado River, Imperial County, GA	Safety Zone	9/21/99
SAN DIEGO BAY 99–003	San Diego Bay, San Diego, CA	Safety Zone	7/13/99
SAN DIEGO BAY 99–004	San Diego Bay, San Diego, CA	Safety Zone	7/13/99
SAN DIEGO BAY 99–006	San Diego Bay, San Diego, CA	Safety Zone	8/6/99
SAN DIEGO BAY 99–007	San Diego Bay, San Diego, CA	Safety Zone	8/6/99
SAN FRANCISCO BAY 99–013	San Francisco Bay, San Francisco, CA	Safety Zone	7/2/99
SAN FRANCISCO BAY 99–014	San Francisco Bay, San Francisco, CA	Safety Zone	7/2/99
SAN FRANCISCO BAY 99–015	San Francisco Bay, San Francisco, CA	Safety Zone	7/2/99
SAN FRANCISCO BAY 99–016	San Francisco Bay, San Francisco, CA	Safety Zone	7/2/99
SAN FRANCISCO BAY 99–017	San Francisco Bay, San Francisco, CA	Safety Zone	7/2/99
SAN FRANCISCO BAY 99–018	San Francisco Bay, San Francisco, CA	Safety Zone	7/2/99
SAN FRANCISCO BAY 99–019	San Francisco Bay, San Francisco, CA	Safety Zone	7/2/99
SAN FRANCISCO BAY 99–020	Suison Bay, CA	Safety Zone	8/6/99
SAN FRANCISCO BAY 99–021	San Francisco, CA	Safety Zone	8/15/99
SAN FRANCISCO BAY 99–022	San Francisco Bay, San Francisco, CA	Safety Zone	9/8/99
SAN FRANCISCO BAY 99–023	San Francisco Bay, San Francisco, CA	Safety Zone	9/8/99
SOUTHEAST ALASKA 99–004	Gastineau Channel, Juneau, AK	Safety Zone	7/3/99
SOUTHEAST ALASKA 99–005	Tracy Arm, AK	Safety Zone	7/28/99
TAMPA 99–061	Tampa Bay, FL	Safety Zone	8/26/99
TAMPA 99–064	Tampa Bay, FL	Safety Zone	9/14/99
TAMPA 99–065	Tampa Bay, FL	Safety Zone	9/20/99
TAMPA 99–066	Tampa Bay, FL	Safety Zone	9/22/99
TAMPA 99–067	Tampa Bay, FL	Safety Zone	9/22/99
WESTERN ALASKA 99–003	Nikiski Rigtender's Dock, Cook Inlet, Alaska	Safety Zone	7/7/99

3RD QUARTER 1999 DISTRICT QUARTERLY REPORT

District docket	Location	Type	Effective date
01–99–041	Hudson River, New York	Safety zone	7/3/99
01–99–051	East River, New York	Safety zone	7/4/99
01–99–089	Somerset, MA	Safety zone	7/2/99
01–99–090	Rock Harbor, Orleans, MA	Safety zone	7/3/99
01–99–101	Cove Neck, NY	Safety zone	7/4/99
01–99–103	Lynn, MA	Safety zone	7/2/99
01–99–105	Arthur Kill, New Jersey	Safety zone	7/4/99
01–99–107	Great South Bay, Patchogue, NY	Safety zone	7/5/99
01–99–108	All-Star Baseball, Boston, MA	Safety zone	7/11/99
01–99–109	Weymouth, MA	Safety zone	7/3/99
01–99–111	Swampscott, MA	Safety zone	7/2/99
01–99–114	Shinnecock Bay, Southampton, NY	Safety zone	7/2/99
01–99–116	Moriches Bay, Smith Point, NY	Safety zone	7/4/99
01–99–122	Oakland Beach, Warwick, RI	Safety zone	7/3/99
01–99–123	Buzzards Bay, MA	Safety zone	7/6/99
01–99–127	West of Martha's Vineyard, MA	Safety zone	7/19/99
01–99–128	New York Harbor, Upper Bay	Safety zone	8/1/99
01–99–129	West of Martha's Vineyard, MA	Safety zone	7/20/99
01–99–131	Casco Bay, Portland, ME	Safety zone	8/21/99
01–99–132	West of Martha's Vineyard, MA	Safety zone	7/21/99
01–99–134	Martha's Vineyard, MA	Safety zone	7/22/99
01–99–136	Gloucester, MA	Safety zone	8/7/99
01–99–137	Beverly, MA	Safety zone	8/8/99
01–99–138	Narrangansett Bay, Coddington Cove, RI	Safety zone	7/23/99
01–99–139	Sagaponock, NY	Safety zone	7/31/99
01–99–143	Martha's Vineyard, MA	Safety zone	8/18/99
01–99–144	Martha's Vineyard, MA	Safety zone	8/18/99
01–99–146	Newburyport, MA	Safety zone	8/7/99
01–99–158	Hudson River, New York	Safety zone	9/25/99
01–99–160	Boston, MA	Security zone	9/2/99
01–99–164	Hudson River, Anchorage Channel	Safety zone	9/11/99
01–99–166	New York Harbor Upper Bay	Safety zone	9/22/99
01–99–168	Boston Harbor, Boston, MA	Safety zone	9/16/99
05–99–047	Chickahominy River, Williamsburg, VA	Safety zone	7/4/99

3RD QUARTER 1999 DISTRICT QUARTERLY REPORT—Continued

District docket	Location	Type	Effective date
05–99–048	Coastal Water, Avon, NC	Safety zone	7/4/99
05–99–049	Coastal Water, Chincoteague, VA	Safety zone	7/4/99
05–99–050	Piakatant River, Methews, VA	Safety zone	7/4/99
05–99–051	Assawomen Bay, Ocean City, MD	Safety zone	7/4/99
05–99–052	Coastal Waters, Ocean City, MD	Safety zone	7/4/99
05–99–053	Chesapeake Bay, Norfolk, VA	Safety zone	7/3/99
05–99–054	York River, Yorktown, VA	Safety zone	7/4/99
05–99–055	Chesapeake Bay, Virginia Beach, VA	Safety zone	7/4/99
05–99–056	Atlantic Ocean, Virginia Beach, VA	Safety zone	7/3/99
05–99–057	Alexandria, VA	Special local	7/10/99
05–99–058	New Bern, North Carolina	Special local	7/4/99
05–99–059	Kent Narrows, Maryland	Special local	7/4/99
05–99–061	Elizabeth River, Norfolk, VA	Safety Zone	7/2/99
05–99–064	Patapsco River, Baltimore, MD	Special local	7/24/99
05–99–065	Willoughby Bay, Norfolk, VA	Special local	7/16/99
05–99–066	Prospect Bay, Kent Narrows, MD	Special local	8/7/99
05–99–067	Patuxent River, Solomons, MD	Special local	8/7/99
05–99–069	Pamlico River, Washington, NC	Special local	8/13/99
05–99–072	Abingdon, Maryland	Special local	8/28/99
05–99–073	Phoebus, Virginia	Safety Zone	8/17/99
05–99–074	Chestertown, Maryland	Special local	9/4/99
05–99–075	Hampton, VA	Safety Zone	8/26/99
05–99–077	Delaware River, Philadelphia, Pennsylvania	Special local	9/5/99
05–99–086	Elizabeth River and York River, VA	Safety Zone	9/13/99
07–99–041	Savannah, GA	Special local	7/4/99
07–99–059	Riviera Beach, Florida	Special local	8/27/99
08–99–044	Paducah, KY	Special local	7/4/99
08–99–045	Metropolis, IL	Special local	7/4/99
08–99–054	Clarksville, TN	Special local	9/12/99
09–98–047	Lake Erie, Put-In-Bay, OH	Safety Zone	7/4/99
09–99–013	Milwaukee Harbor, Milwaukee, WI	Safety Zone	7/1/99
09–99–026	Port Clinton, OH	Safety Zone	7/4/99
09–99–029	Lake Erie-Maumee River, Ohio	Safety Zone	7/3/99
09–99–030	Niagara River, Tonawanda, NY	Safety Zone	7/25/99
09–99–031	Niagara River, Buffalo, NY	Safety Zone	7/4/99
09–99–032	Oswego Harbor, Oswego, NY	Safety Zone	7/24/99
09–99–033	Oswego Harbor, Oswego, New York	Safety Zone	7/25/99
09–99–036	Sodus Bay Channel, Sodus Point, NY	Safety Zone	7/3/99
09–99–039	Milwaukee Harbor, Milwaukee, WI	Safety Zone	8/7/99
09–99–041	Palos Heights, Illinois	Safety Zone	7/4/99
09–99–042	Black River, South Haven, MI	Safety Zone	7/2/99
09–99–043	Lake Michigan, Chicago, IL	Safety Zone	7/3/99
09–99–044	Lake Michigan, St. Joseph, MI	Safety Zone	7/3/99
09–99–045	White Lake, MI	Safety Zone	7/3/99
09–99–046	Lake Michigan, Holland, MI	Safety Zone	7/3/99
09–99–048	Lake Erie, OH	Safety Zone	7/3/99
09–99–049	Lake Erie, OH	Safety Zone	7/10/99
09–99–050	Lake Michigan, Pentwater, MI	Safety Zone	7/3/99
09–99–051	Lake Macatawa, Holland, MI	Safety Zone	7/3/99
09–99–052	White Lake, Whitehall, MI	Safety Zone	7/4/99
09–99–053	Lake Kalamazoo, Saugatuck, MI	Safety Zone	7/3/99
09–99–054	Lake Michigan, Ludington, MI	Safety Zone	7/4/99
09–99–055	Lake Michigan, Manistee, MI	Safety Zone	7/4/99
09–99–056	Lake Michigan, Frankfort, MI	Safety Zone	7/4/99
09–99–057	Grand River, Grand Haven, MI	Safety Zone	7/4/99
09–99–059	Lake Michigan, North Beach, MI	Safety Zone	7/17/99
09–99–060	Lake Michigan, St. Joseph, MI	Safety Zone	7/17/99
09–99–061	Lake Michigan, Michigan City, IN	Safety Zone	7/18/99
09–99–062	Niagara river, Tonawanda, New York	Safety Zone	7/24/99
09–99–063	Black Rock, Canal Buffalo, NY	Safety Zone	8/10/99
09–99–067	Grand River, Grand Haven, MI	Safety Zone	7/31/99
09–99–069	Lake Michigan, New Buffalo, MI	Safety Zone	8/7/99
09–99–070	South Haven, MI	Safety Zone	8/14/99
09–99–071	Lake Michigan, Pentwater, MI	Safety Zone	8/14/99
09–99–072	Milwaukee Harbor, Milwaukee, WI	Safety Zone	9/10/99
09–99–073	Lake Erie Maumee River, Ohio	Safety Zone	9/4/99
09–99–074	Lake Erie Maumee River, Ohio	Safety Zone	9/5/99
09–99–075	Clair, Michigan	Safety Zone	8/14/99
09–99–076	Buffalo, New York	Safety Zone	8/21/99
13–99–021	Willamette River, Portland, OR	Safety Zone	7/4/99
13–99–022	Columbia River, Astoria, OR	Safety Zone	7/4/99
13–99–024	Columbia River, Cascade, OR	Safety Zone	7/4/99

3RD QUARTER 1999 DISTRICT QUARTERLY REPORT—Continued

District docket	Location	Type	Effective date
13–99–025	Columbia River, St. Helens, OR	Safety Zone	7/4/99
13–99–026	Columbia River, St. Helens, OR	Safety Zone	7/3/99
13–99–027	Willamette River, Portland, OR	Safety Zone	7/4/99
13–99–028	Columbia River, Kennewick, WA	Safety Zone	7/4/99
13–99–030	Chehalis River, Aberdeen, WA	Safety Zone	7/4/99
13–99–031	Commencement Bay, WA	Safety Zone	7/4/99
13–99–032	Seattle, WA	Security	7/9/99
13–99–034	Willamette River, Portland, OR	Safety Zone	8/13/99
13–99–035	Lake Washington, Washington State	Safety Zone	8/5/99
13–99–036	Elliott Bay, Washington State	Safety Zone	8/4/99
13–99–037	Columbia River, Astoria, OR	Safety Zone	8/14/99
13–99–038	Willamette River, Portland, OR	Safety Zone	8/21/99
13–99–039	Willamette River, Portland, OR	Safety Zone	9/2/99
13–99–041	Puget Sound, Washington State	Safety Zone	9/12/99
13–99–042	Commencement Bay, Tacoma, WA	Safety Zone	9/19/99
13–99–043	Willamette River, Portland, OR	Safety Zone	9/17/99

[FR Doc. 99–33805 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–26–1–6965a; FRL–6514–6]

Approval and Promulgation of Implementation Plan for Louisiana: Transportation Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to the Louisiana State Implementation Plan (SIP) that contains the transportation conformity rule. The conformity rules assure that in air quality nonattainment or maintenance areas, projected emissions from transportation plans and projects stay within the motor vehicle emissions ceiling in the SIP. The transportation conformity SIP revision enables the State to implement and enforce the Federal transportation conformity requirements at the State level. The EPA's approval action streamlines the conformity process and allows direct consultation among agencies at the local levels. The final approval action is limited to Transportation Conformity. The EPA approved the SIP revision sent under conformity of general Federal actions on September 13, 1996 (61 FR 48409).

The EPA approves this SIP revision under sections 110(k) and 176 of the Clean Air Act (Act). We have given our rationale for approving this SIP revision in this action.

DATES: This rule is effective on February 28, 2000 without further notice, unless EPA receives adverse comment by January 28, 2000. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: You should send your written comments to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PDL) at the address given below. You may inspect copies of the State's SIP revision and other relevant information during normal business hours at the following locations. If you wish to examine these documents, you should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–7214.

Louisiana Department of Environmental Quality, Air Quality, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810, Telephone: (225) 765–0178.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E.; Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION:

We have outlined the contents of this document below for your reading convenience:

I. Background
  A. What is a SIP?
  B. What is the Federal approval process for a SIP?
  C. What is transportation conformity?
  D. Why must the State send a transportation conformity SIP?
  E. How does transportation conformity work?
II. Approval of the State Transportation Conformity Rule
  A. What did the State send?
  B. What is EPA approving today and why?
  C. How did the State satisfy the interagency consultation process (40 CFR 93.105)?
  D. Why did the State exclude the grace period for new nonattainment areas (40 CFR 93.102(d))?
  E. What parts of the rule are excluded?
III. Opportunity for Public Comments
IV. Administrative Requirements

I. Background

A. What Is a SIP?

The states under section 110 of the Act must develop air pollution regulations and control strategies to ensure that state air quality meets the National Ambient Air Quality Standards (NAAQS) established by the EPA. The Act under section 109 established these ambient standards which currently includes six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must send these regulations and control strategies to us, the EPA, for approval and incorporation into the Federally enforceable SIP.

Currently, each state has a federally approved SIP which protects air quality and has emission control plans for nonattainment areas. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

B. What Is the Federal Approval Process for a SIP?

The states must formally adopt the regulations and control strategies consistent with state and Federal laws for incorporating the state regulations into the Federally enforceable SIP. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state will send these provisions to us for inclusion in the federally enforceable SIP. We must then decide on an appropriate Federal action, provide public notice, and request additional public comment on the action. If anyone sends adverse comments, we must consider the comments before a final action.

We incorporate all state regulations and supporting information (sent under section 110 of the Act) into the Federally approved SIP after our approval action. We maintain records of such SIP actions in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The Government does not reproduce the text of the Federally approved state regulations in the CFR. They are ''incorporated by reference,'' which means that the specific state regulation is cited in the CFR and is considered a part of the CFR the same as if the text were fully printed in the CFR.

C. What Is Transportation Conformity?

Conformity first appeared in the Act's 1977 amendments (Public Law 95–95). Although the Act did not define conformity, it stated that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated.

The Act's 1990 Amendments expanded the scope and content of the conformity concept by defining conformity to an implementation plan. Section 176(c) of the Act defines conformity as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. Also, the Act states that no Federal activity will: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

D. Why Must the State Send a Transportation Conformity SIP?

We were required to issue criteria and procedures for determining conformity of transportation plans, programs, and projects to a SIP by section 176(c) of the Act. The Act also required the procedure to include a requirement that each State submit a revision to its SIP including conformity criteria and procedures. We published the first transportation conformity rule in the November 24, 1993, **Federal Register** (FR), and it was codified at 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. We required the States and local agencies to adopt and submit a transportation conformity SIP revision to us by November 25, 1994. The State of Louisiana sent a transportation conformity SIP on November 23, 1994, but we could not approve this SIP revision. We revised the transportation conformity rule on August 7, 1995 (60 FR 40098), November 14, 1995 (60 FR 57179), August 15, 1997 (62 FR 43780), and it was codified under 40 CFR part 51, subpart T and 40 CFR part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws (62 FR 43780). Our action of August 15, 1997, required the States to change their rules and send a SIP revision by August 15, 1998.

E. How Does Transportation Conformity Work?

The Federal or State transportation conformity rule applies to all nonattainment and maintenance areas in the State. The Metropolitan Planning Organizations (MPO), the State Departments of Transportation (in absence of a MPO), and U.S. Department of Transportation make conformity determinations. These agencies make conformity determinations on transportation plans, programs, and projects. The MPOs calculate the projected emissions for the transportation plans and programs and compare those calculated emissions to the motor vehicle emissions ceiling established in the SIP. The calculated emissions must be smaller than the motor vehicle emissions ceiling for showing a positive conformity with the SIP.

II. Approval of the State Transportation Conformity Rule

A. What Did the State Send?

On October 21, 1998, the Governor of Louisiana sent a SIP revision that includes the State's transportation conformity and consultation rule. At the same time, the Governor withdrew his November 23, 1994, submission. Also, the State submitted additional information on November 19, 1998, and June 29, 1999. The Louisiana Department of Environmental Quality (LDEQ) published its final transportation conformity rule on September 20, 1998, in Louisiana Register after appropriate public participation and interagency consultation.

B. What is EPA Approving Today and Why?

We are approving the Louisiana transportation conformity rule that the Governor of Louisiana sent us on October 21, 1998, information submitted on November 19, 1998, and June 29, 1999, except for the incorporation by reference of sections 93.102(c), 93.104(d), 93.109(c)-(f), 93.118(e), 93.120(a)(2), 93.121(a)(1), and 93.124(b) of 40 CFR into Louisiana Administrative Code (LAC) 33:III.1432. The rationale for exclusion of these sections is discussed in section II.E of this action. The LDEQ has adopted the Federal rules by ''incorporation by reference'' except for the interagency consultation section (40 CFR 93.105) and the grace period for new nonattainment areas (40 CFR 93.102(d)). We will discuss the reasons for exclusion of these two sections later in this notice.

''Incorporation by Reference'' (IBR) means that the State adopted the Federal rules without rewriting the text of the Federal rules but by referring to them for inclusion as if they were printed in the state regulation. The Federal Transportation Conformity Rule required the states to adopt a majority of the Federal rules in verbatim form with a few exceptions. The States can not make their rules more stringent than the Federal rules unless the State's rules apply equally to nonfederal entities as well as Federal entities. The LDEQ Transportation Conformity Rule is the same as the Federal rule and the State has made no additional changes or modifications, with the exception of those sections mentioned above.

We have evaluated this SIP revision and have determined that the State has fully adopted the Federal transportation conformity rules as described in 40 CFR part 51, subpart T and part 93, subpart A. Also, the LDEQ has completed and satisfied the public participation and comprehensive interagency consultations during development and adoption of these rules at the local level. Therefore, we are approving this SIP revision.

Our approval action does not include general conformity (40 CFR part 51, subpart W). We approved the Louisiana general conformity SIP on September 13, 1996 (61 FR 48409).

C. How Did the State Satisfy the Interagency Consultation Process?

Our rule requires the States to develop their own processes and procedures for interagency consultation among the Federal, State, and local agencies and resolution of conflicts meeting the criteria in 40 CFR 93.105. The SIP revisions must include processes and procedures to be followed by the MPO, State Department of Transportation (DOT), and the U. S. Department of Transportation (USDOT) in consulting with the State and local air quality agencies and EPA before making conformity determinations. Also, the transportation conformity SIP revision must have processes and procedures for the State and local air quality agencies and EPA in coordinating development of applicable SIPs with MPOs, State DOT, and USDOT.

The State developed its own consultation rule based on the elements in 40 CFR 93.105, and excluded this section from IBR. As a first step, the State established an ad hoc multiagency committee that included representatives from the State air quality agency, State DOT, USDOT, MPOs, EPA, the local air quality agency, local transportation agencies, and local transit operators. The State air quality agency served as the lead agency in coordinating the multiagency efforts for developing the consultation rule. The committee met periodically and drafted consultation rules by considering the elements in 40 CFR 93.105 and 23 CFR part 450, and by integrating the local procedures and processes into the final consultation rule. The consultation rule developed through this process is unique to the State of Louisiana and is codified under section LAC 33:III.1434 of the State rule. We have determined that the State adequately included all elements of 40 CFR 93.105 and meets the EPA SIP requirements.

D. Why Did the State Exclude the Grace Period for New Nonattainment Areas (40 CFR 93.102(d))?

The State excluded 40 CFR 93.102(d) from its IBR. Section 93.102(d) of 40 CFR allows up to 12 months for newly designated nonattainment areas to complete their conformity determination. The Sierra Club challenged this section of the rule arguing that allowing a 12-month grace period was unlawful under the Act. On November 4, 1997, the United States Court of Appeals for the District of Columbia Circuit held in *Sierra Club* v. *Environmental Protection Agency*, 129 F.3d 137 (D.C.Cir.1997), that EPA's grace period violates the plain terms of the Act and, therefore, is unlawful. Based on this court action, the State has excluded this section from its rule. We agree with the State's action, and exclusion of 40 CFR 93.102(d) will not prevent us from approving the State transportation conformity SIP.

E. What Parts of the Rule Are Excluded?

We promulgated the transportation conformity rule on August 15, 1997. On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *Environmental Defense Fund* v. *Environmental Protection Agency*, 167 F.3d 641 (D.C.Cir.1999). The Court granted the environmental group's petition for review and ruled that 40 CFR 93.102(c)(1), 93.121(a)(1), and 93.124(b) are unlawful and remanded 40 CFR 93.118(e) and 93.120(a)(2) to EPA for revision to harmonize these provisions with the requirements of the Act for an affirmative determination that the Federal actions will not cause or increase violations or delay attainment. The sections that were included in this decision were:

(a) 40 CFR 93.102(c)(1) which allowed certain projects for which the National Environmental Policy Act (NEPA) process has been completed by the DOT to proceed toward implementation without further conformity determinations during a conformity lapse;

(b) 40 CFR 93.118(e) which allowed use of motor vehicle emissions budgets (MVEB) in the submitted SIPs after 45 days if EPA had not declared them inadequate;

(c) 40 CFR 93.120(a)(2) which allowed use of the MVEB in a disapproved SIP for 120 days after disapproval;

(d) 40 CFR 93.121(a)(1) which allowed the nonfederally funded projects to be approved if included in the first three years of the most recently conforming transportation plan and transportation improvement programs, even if conformity status is currently lapsed; and

(e) 40 CFR 93.124(b) which allowed areas to use a submitted SIP that allocated portions of a safety margin to transportation activities for conformity purposes before EPA approval.

Since the States were required to submit transportation conformity SIPs not later than August 15, 1998, and include those provisions in verbatim form, the State's SIP revision includes all those sections which the Court ruled unlawful or remanded for consistency with the Act. The EPA can not approve these sections.

We believe that the LDEQ has complied with the SIP requirements and has adopted the Federal rules which were in effect at the time that the transportation conformity SIP was due to the EPA. If the court had issued its ruling before adoption and SIP submittal by the LDEQ, we believe the LDEQ would have removed these sections from its IBR. The LDEQ has expended its resources and time in preparing this SIP and meeting the Act's statutory deadline, and EPA acknowledges the agency's good faith effort in submitting the transportation conformity SIP on time.

The LDEQ will be required to submit a SIP revision in the future when EPA revises its rule to comply with the court decision. Because the court decision has invalidated these provisions, we believe that it would be reasonable to exclude the corresponding sections of the state rules from this SIP approval action. As a result, we are not taking any action on the IBR of sections 93.102(c), 93.104(d), 93.109(c)-(f), 93.118(e), 93.120(a)(2), 93.121(a)(1), and 93.124(b) of 40 CFR at LAC 33:III.1432 under the State conformity rule. The conformity determinations affected by these sections should comply with the relevant requirements of the statutory provisions of the Act underlying the court's decision on these issues. The EPA has already issued guidance on how to implement these provisions in the interim prior to EPA amendment of the Federal transportation conformity rules. Once these Federal rules have been revised, conformity determinations in Louisiana should comply with the requirements of the revised Federal rule until corresponding provisions of the Louisiana conformity SIP have been approved by EPA.

III. Opportunity for Public Comments

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve this SIP revision if adverse comments are filed. This rule will be effective on February 28, 2000 without further notice unless we receive adverse comment by January 28, 2000. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

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.

B. Executive Orders on Federalism

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new Executive Order on federalism, Executive Order 13132, (64 FR 43255, August 10, 1999), which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 (52 FR 41685, October 30, 1987), on federalism still applies. This rule will not have a substantial direct effect on 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, as specified in Executive Order 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Act.

C. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''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 a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it approves a State program.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of 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. *See Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 28, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Transportation conformity, Transportation-air quality planning, Volatile organic compounds.

Dated: November 22, 1999.

Gregg A. Cooke,

Regional Administrator, Region 6.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended to read as follows:

PART 52—[AMENDED]

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

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

SUBPART T—LOUISIANA

2. § 52.970 is amended in paragraph (c), under Chapter 14—Conformity, by adding Subchapter B, Sections 1431, 1432, and 1434, after Subchapter A, Section 1415, to read as follows:

§ 52.970 Identification of plan.

*   *   *   *   *

(c) * * *

EPA APPROVED LOUISIANA REGULATIONS IN THE LOUISIANA SIP

State citation	Title/subject	State approval date	EPA approval date	Explanation
* *	* *	*	*	*
CHAPTER 14—Conformity				
* *	* *	*	*	*
Subchapter B	Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved under Title 23 U.S.C. or the Federal Transit Act			
Section 1431	Purpose	September 1998, LR24:1684	[December 29, 1999 FR volume and page number].	
Section 1432	Incorporation by Reference.	July 1998, LR24:1280	[December 29, 1999 FR volume and page number].	No action is taken on the portions of LAC 33:III.1432 that contain 40 CFR 93.102(c), 93.104(d), 93.109(c)–(f), 93.118(e), 93.120(a)(2), 93.121(a)(1), and 93.124(b).
Section 1434	Consultation	November 1994, LR20:1278; July 1998, LR24:1280; September 1998, LR24:1684; October 1998, LR24:1925.	[December 29, 1999 FR volume and page number].	
* *	* *	*	*	*

[FR Doc. 99–33448 Filed 12–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA 34–9919(c), GA25–1–9805(c); FRL–6515–8]

Approval and Promulgation of Air Quality Implementation Plans; Georgia; 15 Percent Rate-of-Progress Plan and 9 Percent Rate-of-Progress Plan for the Atlanta Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule clarification.

SUMMARY: This action clarifies two final rules which were published on March 18, 1999, and April 26, 1999. This action pertains to the State Implementation Plan (SIP) revisions submitted by Georgia on November 15, 1993, consisting of the 15 percent Rate-of-Progress Plan for the Atlanta ozone nonattainment area, which was amended on June 17, 1996, and the Post 1996 Rate-of-Progress Plan (9 Percent Plan) for the Atlanta ozone nonattainment area, also submitted on June 17, 1996.

EFFECTIVE DATE: This rule is effective December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Region 4, Air, Pesticides and Toxics Management Division, Air Planning Branch at (404) 562–9042.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 1999, (64 FR 13348) and April 26, 1999, (64 FR 20186), EPA published a final rule approving the 15 Percent Plan and 9 Percent Plan SIP revisions respectively. These SIP revisions were submitted by the Georgia Environmental Protection Division (GAEPD) on November 15, 1993, and amended on June 17, 1996, for the Atlanta ozone nonattainment area.

Need for Clarification

On March 18, 1999, and April 26, 1999, EPA granted final conditional approval of the 15 Percent Plan SIP revision for the Atlanta ozone nonattainment area and final approval of the 9 Percent Plan SIP revision. These documents identify various control programs which constitute the reductions GAEPD used to demonstrate a 15 percent reduction in emissions of volatile organic compounds and a 9 percent reduction in nitrogen oxides. Transportation control measures (TCMs) were listed as one of the types of control programs in both actions. However, the rulemaking actions did not specifically state which TCMs the action approved. This document serves to identify which TCMs are approved as part of the 15 Percent Plan and 9 Percent Plan SIP revisions.

Below is a list of the TCMs that are contained in both the 15 percent and 9 percent SIPs:

1. High Occupancy Vehicle (HOV) lane on I–85 from Chamblee-Tucker Road to State Road 316
2. Clean Fuel Vehicles Revolving Loan Program
3. Regional Commute Options Program and HOV Marketing Program
4. HOV lanes on I–75 and I–85 (inside I–285)
5. Two Park and Ride Lots: Rockdale County-Sigman at I–20 and Douglas County-Chapel Hill at I–20
6. MARTA Express Bus routes (15 buses)
7. Signal preemption for MARTA routes #15 and #23
8. Improve and expand service on MARTA's existing routes in southeast DeKalb County
9. Acquisition of clean fuel buses for MARTA and Cobb County Transit
10. ATMS/Incident Management Program on I–75/I–85 inside I–285 and northern ARC of I–285 between I–75 and I–85
11. Upgrading, coordination and computerizing intersections

In addition, two other TCMs were provided in the 15 Percent Plan and 9 Percent Plan revisions that the State has subsequently requested be withdrawn. These include five park-and-ride lots and bike and pedestrian facilities. These TCMS are being removed because the Metropolitan Planning Organization could not clearly identify these specific projects by location in the transportation plan and improvement program. In order for TCMs to be approved in the SIP, they must be included in the transportation plan and improvement program. Because these bike and pedestrian facilities and park-and-ride lots are not included in the transportation plan and improvement program, EPA cannot approve them into the SIP.

What are the consequences of not including these controls?

The 15 Percent Plan and 9 Percent Plan SIP revisions both provided additional emission reductions from the other control program (i.e., the TCMs listed above). These emission reductions were not included in the calculated demonstration of a 15 percent reduction of volatile organic compounds or the demonstration of a 9 percent reduction of nitrogen oxides. These ‘‘unclaimed’’ emission reductions are greater than the amount of credit loss from the five park-and-ride lots (.03 tons per day of VOC and .04 tons per day of NO_x) and the bike and pedestrian facilities (.2 VOC and .5 NO_x). Therefore, the additional emissions reductions of 1.06 tons per day of VOC and 19.47 tons per day of NO_x which were not claimed are sufficient to make up the loss of credit from the two withdrawn TCMs.

Administrative Requirements

Executive Order 12866

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

Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ‘‘economically significant’’ as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks. This rule is not subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because it does not include any information collection requirements. This rule is not subject to the requirements of the National Technology Transfer and Advancement Act (NTTAA) because it does not include provisions for technical standards.

Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 8, 1999.

Stanley A. Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of Chapter I, Title 40, *Code of Federal Regulations* is amended as follows:

PART 52—[AMENDED]

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

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

Subpart—L Georgia

2. Accordingly, § 52.570 is amended by adding paragraph (e) to read as follows:

§ 52.570 Identification of plan.

* * * * *

(e) EPA Approved Georgia Nonregulatory Provisions

Name of nonregulatory SIP Provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date
1. High Occupancy Vehicle (HOV) lane on I–85 from Chamblee-Tucker Road to State Road 316.	Atlanta Metropolitan Area ..	November 15, 1993 and amended on June 17, 1996.	March 18, 1999 and April 26, 1999.
2. Clean Fuel Vehicles Revolving Loan Program.			
3. Regional Commute Options Program and HOV Marketing Program.			
4. HOV lanes on I–75 and I–85.			
5. Two Park and Ride Lots: Rockdale County-Sigman at I-20 and Douglas County-Chapel Hill at I–20.			
6. MARTA Express Bus routes (15 buses).			
7. Signal preemption for MARTA routes #15 and #23.			
8. Improve and expand service on MARTA's existing routes in southeast DeKalb County.			
9. Acquisition of clean fuel buses for MARTA and Cobb County Transit.			
10. ATMS/ Incident Management Program on I–75/I–85 inside I–285 and northern ARC of I–285 between I–75 and I–85.			
11. Upgrading, coordination and computerizing intersections.			

[FR Doc. 99–33527 Filed 12–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK–21–1709–a; FRL–6515–3]

Approval and Promulgation of State Implementation Plans: Alaska

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) approves various revisions to the carbon monoxide (CO) Alaska State Implementation Plan (SIP) for Alaska. These revisions to the SIP were submitted in three different packages to EPA, dated February 6, 1997, June 1, 1998, and September 10, 1998.

The revisions cover numerous regulations, the Transportation Conformity Rule (18 AAC 50); Emissions Inspection and Maintenance (I/M) requirements for Motor Vehicles (18 AAC 52); and Fuel Requirements for Motor Vehicles (18 AAC 53). Highlights include changing the I/M program schedule from annual to biennial, replacing the CO contingency measures for Anchorage, and streamlining and updating several portions of the Alaska Air Quality Control Plan for more efficient reading and organization.

DATES: This direct final rule is effective on February 28, 2000 without further notice, unless EPA receives adverse comment by January 28, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to: Ms. Montel Livingston, SIP Manager, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, Washington 98101, and the Alaska Department of Environmental Conservation, 410 Willoughby Avenue, Suite 105, Juneau, Alaska 99801–1795.

FOR FURTHER INFORMATION CONTACT: Ms. Montel Livingston, Office of Air Quality (OAQ–107), EPA, Seattle, Washington 98101, (206) 553–0180.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

A. What SIP Amendments is EPA Approving?
B. What CO Updates and Changes Were Made to Air Quality Projections and CO Contingency Measures?
C. What Are the Significant Changes to Alaska's I/M Air Quality Program and Regulations (AAC 52)?
D. What Are the Overall Changes to Alaska's Regulations AAC 50 and 53?
E. What Is Transportation Conformity?
F. How Does Transportation Conformity Work?

G. What Are the Effects to Alaska's Transportation Conformity Program from the I/M Rule Change?

H. Why Must the State Have A Transportation Conformity SIP?

I. What is EPA Approving Today for Transportation Conformity and Why?

J. How Did the State Satisfy the Transportation Conformity Interagency Consultation Process (40 CFR 93.105)?

K. What Parts of the Transportation Conformity Rule Are Excluded?

A. What SIP amendments is EPA approving?

The following table outlines the submittals EPA received and is approving in this action:

Date of submittal to EPA	Items Revised
2–6–97	—Alaska State Air Quality Control Plan: Volume II, Section I. —Alaska State Inspection and Maintenance Program Manual. —Biennial Vehicle Inspection Program. —Revised Rollback Calculation.
6–1–98	—Emission Inspection and Maintenance Requirements.
9–10–98	—Alaska State Air Quality Control Plan: Volume II, Sections II and III. —Air Quality Control Regulations, Transportation Conformity Rule 18 AAC 50. —Fuel Requirements for Motor Vehicles: Regulations 18 AAC 53. —Anchorage Carbon Monoxide Contingency Measures.

B. What CO Updates and Changes Were Made to Air Quality Projections and CO Contingency Measures?

- EPA Approves a new CO Contingency Measure for Anchorage that replaces its past two CO Contingency Measures.

In the September 10, 1998 submittal from ADEC, ADEC requests EPA's approval of its new CO contingency measure, an enhanced technician training certification (TTC) program in Anchorage. The TTC contingency measure consists of additional local training and certification for mechanics. The TTC program includes a series of enhanced technician training modules aimed at competency areas such as electrical theory, emission control systems, electronic ignitions, fuel injection, on-board diagnostics, advanced diagnostic tools and procedures, oxygen sensors, catalytic converters, and the use of current analytical equipment.

The TTC program helps ensure that mechanics are trained to properly maintain and repair newer vehicles with advanced technology. It may also enhance efficiency, which would provide a cost benefit to consumers.

The TTC program, found in State regulation 18 AAC 52.400–410, was adopted by the State as a CO contingency measure for Anchorage upon Anchorage's reclassification to a serious CO nonattainment area. In addition, the TTC program was already approved by EPA on February 14, 1996 (61 FR 5704) as a CO contingency measure for Fairbanks, Alaska.

The TTC program also becomes the contingency measure for the vehicle miles traveled (VMT) forecasting and tracking requirement found in section 187 of the Clean Air Act Amendments of 1990.

The two replaced contingency measures for Anchorage were (1) compressed natural gas vehicles (CNG) procurement requirements for government fleets, and, (2) the expansion of the oxygenated fuels program to the Matanuska-Susitna Valley. Both of these contingency measures were impractical to initiate upon Anchorage's CO reclassification to serious.

Using the CNG procurement requirements for government fleets as a contingency measure was determined unworkable at this time. Major issues included lack of a refueling infrastructure for CNG vehicles in and around Anchorage, and there are only selected models available now which are dedicated CNG vehicles certified to ultra low emission vehicle standards. The extent of these issues were such that it would be infeasible to implement the CNG contingency measure in Anchorage and expect to gain meaningful reductions in emissions.

The second contingency measure was the expansion of the oxygenated fuels program. With the continued fleet turnover to newer, cleaner (technologically improved) cars, the information from the oxygenated fuels program in Anchorage indicates that oxyfuel expansion to the Matanuska-Susitna Valley was unlikely to provide the benefits originally projected.

Expanding the oxygenated gasoline control area to the Matanuska-Susitna Valley was inherently less cost effective than an oxyfuel requirement in Anchorage. Expanding the requirement to the valley is less effective because vehicles fueled in the valley spend less time, on average, traveling in the nonattainment area than those fueled in Anchorage itself.

Although the benefits of oxygenated gasoline were estimated on the basis of the best information available at the time, recent MOBILE model updates have suggested that oxygenated gasoline CO emission reductions may be overestimated in some cases. Extending the program to the valley is likely to result in even smaller benefits than were originally anticipated in the plan.

EPA concurs with ADEC's request to repeal and replace the past contingency measures with the TTC program.

- How Does Approval of the New Contingency Measure Change Alaska's Air Quality Control Regulations in 18 AAC 53, *Fuel Requirements for Motor Vehicles?*

Regulation 18 AAC 53.015, Expansion of Control Area (found under Chapter 53, Article I, Oxygenated Gasoline Requirements), is repealed. This regulation had served as a CO contingency measure for Anchorage and described the geographic boundaries of an expanded oxygenated fuels programs in Anchorage if implemented as a contingency measure.

- The Rollback Modeling Calculation Used to Determine CO Emission Reductions is Clarified.

ADEC typically uses rollback modeling to determine CO emission reductions needed to reach attainment of the CO national ambient air quality and standards (NAAQS). The rollback calculation determines a percentage reduction target by taking the ratio of the difference between the second highest CO exceedance value in the emission inventory base year and the ambient standard, and the second highest value in the base year adjusted for the ambient background concentration. ADEC clarifies in Alaska's CO SIP that the target CO level for SIP purposes is 9.0 ppm, or the CO NAAQS. Using 9 ppm as the appropriate target level gives ADEC the amount of control necessary to attain and maintain the CO NAAQS.

- Long-Term Air Quality Projections are Updated.

The on-road mobile source portion of Anchorage's 1990 base year CO emission inventory was updated, using MOBILE5a which was the latest emission estimation model available as of December 1, 1994. The 1993 periodic inventory was developed and adjusted for population growth factors, and for changes in the Inspection and Maintenance program. The 1995 projected year inventory was also developed and adjusted for population growth factors, and for changes in the inspection and maintenance program and oxygenated fuels program. Tables provide summaries of the 1990 base year and 1995 projected year emissions by source category. In addition, daily emissions are calculated.

Also, data was updated to include 1995 2nd highest 8-hour ambient CO concentrations recorded at Anchorage monitoring sites.

In addition, best estimates of future VMT projections in Anchorage were completed through 1995.

- Information is Streamlined and Reorganized in Alaska's CO SIP.

The numerous non-substantive reformatting and restructuring changes streamline the Alaska SIP and make for more efficient and customer-friendly reading. They collectively, rather than individually, result in a much more significant impact on the SIP's organization.

As an example, a table was created showing the 1998 Transportation Control Strategies for Anchorage. Headings include Federal Control Strategies, State Control Strategies, and Local primary Control Strategies. Only one footnote accompanied the table, and that was an explanation of the oxygenated fuels program. The table is easy to understand and effectively summarizes important information.

Other similar edits found in Volume II, sections II and III of the State Air Quality Control Plan removed out-of-date references, eliminated duplicity and redundancy, reflected changes to Alaska's Inspection and Maintenance program, and generally reorganized for better sequence of information and requirements, while graphing projections and trends in population and average daily traffic.

C. What are the Significant Changes to Alaska's I/M Air Quality Program and Regulations (AAC 52)?

EPA approves all the changes to Alaska's I/M regulations submitted by the Alaska Department of Environmental Conservation (ADEC) on February 6, 1997 and June 1, 1998. The following explains the major changes:

- I/M Program Changes From Annual to Biennial.

In 1995, the Alaska State Legislature in Senate Bill 28 required that all State I/M programs implement biennial I/M testing beginning no later than January 1, 1997. In February 1997, ADEC submitted to EPA the updated State I/M regulations that reflect this change. Many States nationwide have changed their I/M programs from annual to biennial programs. This change has provided more convenience to vehicle owners (inspections are required less frequently, except when ownership of a vehicle is transferred), only negligible increases in vehicle emissions, and improved I/M program efficiency. ADEC analyzed the impact of changing the I/M program from an annual to a biennial program on motor vehicle emissions and found it would not significantly impact emission reductions. The I/M regulations also reflect a change in fees. Alaska's I/M programs in Fairbanks and Anchorage are operated by local government, Fairbanks North Star Borough and the Municipality of Anchorage, respectively, who have the authority to set their own program fees. In addition, in June 1998 the vehicle inspection schedule was changed to match the vehicle registration schedule (required by Alaska Statute 28.10.108), resulting in vehicle inspection and registration occurring on the same biennial schedule. The certificate of inspection is $18 in both Anchorage and Fairbanks. Anchorage has set a maximum of $60 and Fairbanks $35 for inspection testing.

- Provisions for Waivers and Emissions-Related Repair Costs Changed.

The provisions for waivers granted to motorists from passing an I/M program inspection have been revised. Waivers are now valid for one inspection cycle (every two years), instead of for one year. ADEC offset the change by proposing more stringent requirements for repair cost waivers. Section 18AAC 52.065 (''Emissions-Related Repair Cost Minimum'') was updated to require motorists to meet the minimum necessary repair costs of $450 per inspection cycle before qualifying for a waiver, as opposed to spending a maximum of $450 annually. The new requirements should increase the number of repairs completed, which could benefit air quality. This change should address public concern over waivers being valid for two years (one inspection cycle).

- New Requirements for Dealers of Used Motor Vehicles.

In accordance with Alaska statute 45.45.400 (''Prohibited transfer of used motor vehicle''), the I/M regulations contain new requirements for dealers of used motor vehicles. The requirements apply only to cars tested by a dealership and held in inventory on a used car lot, since these cars are not likely to pollute the air. In general, an I/M certificate is good for one year for cars that are inspected while in the dealer's inventory or if the dealer registers the vehicle in the buyer's name. The new requirements are outlined in the I/M regulation under 18 AAC 52.020 (''Certificate of Inspection Requirements'').

- ADEC's Dual Authority With an Implementing Agency Clarified.

The regulations clarify ADEC's dual authority with the implementing agencies, Fairbanks North Star Borough and the Municipality of Anchorage, under the provisions for enforcement procedures. ADEC has the authority to take an enforcement action against a motorist, certified mechanic, or station with or without the participation of the implementing agency to ensure compliance with enforcement provisions (18 AAC 52.100 and AAC 52.105).

- Notice of Violation Provisions Pertaining to Motorist Updated.

More stringent enforcement procedures for violations by motorists are outlined in 18 AAC 52.100. ''If a motorist fails to respond or provide appropriate proof of compliance with this chapter within 30 days after receiving a notice of violation,'' the implementing agency may refer the matter for prosecution under the provision of Alaska state law pertaining to Local Air Quality Control Programs (AS 46.14.400(j)) or as a Class A misdemeanor under the provision for Criminal Penalties (AS 46.03.790). The penalty for motorists who fail to respond to a notice of violation (or fail to provide appropriate proof of compliance) was changed from potential loss of vehicle registration to the possibility of prosecution under Alaska's misdemeanor statutes.

- New Provision Allows for Visual Identification of Certificate of Inspection ('Sticker Program').

A new provision allows the implementing agency to require a visual identification, such as windshield sticker or license plate tab, that clearly shows compliance with inspection requirements. A sticker program (or similar program) provides easy visual verification of program compliance, which improves enforcement and provides incentive to motorists to have their cars inspected. Details of this provision are outlined in 18 AAC 52.025.

- Update to Requirements for Grey Market Vehicles.

Grey market vehicles are manufactured for use outside of, and imported into, the United States. The revised provision for grey market vehicles (18 AAC 52.080) reduces the requirements for issuing a certificate of inspection on a grey market vehicle when it has a United States title. However, grey market vehicles are required to pass visual and functional inspections and/or tailpipe emission standards required by the I/M program manual. In addition, motorists are still required to obtain the applicable importation documents issued by EPA or the U.S. Department of Transportation.

D. What are the Overall Changes to Alaska's Regulations AAC 50 and 53?

EPA is approves in part, and takes no action on the following Alaska Air Quality Control Regulations:

Approvals 18 AAC 50

EPA is approving the following transportation conformity regulations under 18 AAC 50 as adopted by ADEC and effective on September 4, 1998: Section 700; 705; Section 710 with the exception of incorporation by reference of sections 93.102(c), 93.102(d), 93.104(d), 93.104(e)(2), 93.109(c)-(f), 93.118(e), 93.119(f)(3), 93.120(a)(2), 93.121(a)(1) and (b), and 93.124(b); 715; and 720. EPA takes no action at this time on the exceptions found under section 710. (For an explanation of incorporation by reference, please see ''I.'')

No Action 18 AAC 50

In addition to the transportation conformity exceptions listed in the preceding paragraph, EPA is taking no action at this time on any of the 18 AAC 50 regulations, Articles 1 through 9, submitted on September 10, 1998. These regulations that are not being acted upon relate to the permitting of new and modified stationary sources or do not relate to the purposes of the SIP under section 110 of the Act or implement other provisions of the Clean Air Act.

Approvals 18 AAC 53

EPA is approving the regulations found in 18 AAC 53 regarding fuel requirements for motor vehicles, with the exception of section 015 which is repealed (see below). These regulations had minor, non-substantive and streamlining changes.

Repeal of 18 AAC 53.015

Regulation 18 AAC 53.015, Expansion of Control Area (found under Chapter 53,Article I, Oxygenated Gasoline Requirements),is repealed. This regulation had served as a CO contingency measure for Anchorage and described the geographic boundaries of an expanded oxygenated fuels programs in Anchorage if implemented as a contingency measure.

E. What is Transportation Conformity?

Conformity first appeared in the Act's 1977 amendments (Pub. L. 95–95). Although the Act did not define conformity, it stated that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated. The Act's 1990 Amendments expanded the scope and content of the conformity concept by defining conformity to an implementation plan. Section 176(c) of the Act defines conformity as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. Also, the Act states that no Federal activity will: (1) cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

F. How Does Transportation Conformity Work?

The Federal or State Transportation Conformity Rule applies to all nonattainment and maintenance areas in the State. The Metropolitan Planning Organizations (MPO), the State Departments of Transportation (in absence of a MPO), and U.S. Department of Transportation make conformity determinations. These agencies make conformity determinations on programs and plans such as transportation improvement programs, transportation plans, and projects. The MPOs calculate the projected emissions for the transportation plans and programs and compare those calculated emissions to the motor vehicle emissions ceiling established in the SIP. The calculated emissions must be smaller than the motor vehicle emissions ceiling for showing a positive conformity with the SIP.

G. What are the Effects to Alaska's Transportation Conformity Program From the I/M Rule Change?

The I/M action has no impact on the transportation emissions budget. However, the switch to biennial I/M does make it somewhat more difficult to demonstrate regional conformity, since it results in small increases in future emissions projections (while the allowable emissions budgets do not increase). However, this impact has not caused a significant problem in continuing to demonstrate conformity in Anchorage and Fairbanks, largely due to the continued decline in projected emissions resulting from fleet turnover.

Updated baseline and attainment inventories are scheduled for Anchorage and Fairbanks as part of the revised air quality attainment plans that must be prepared due to the redesignation to serious CO nonattainment status. As part of this process, the biennial I/M programs will become part of both the baseline and attainment inventories (and thus emissions budgets associated with each inventory), thereby totally eliminating any impact on regional conformity determinations.

H. Why Must the State Have a Transportation Conformity SIP?

EPA was required to issue criteria and procedures for determining conformity of transportation plans, programs, and projects to a SIP by section 176(c) of the Act. The Act also required the procedure to include a requirement that each State submit a revision to its SIP including conformity criteria and procedures. EPA published the first transportation conformity rule in the November 24, 1993, **Federal Register** (FR), and it was codified at 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. EPA required the States and local agencies to adopt and submit a transportation conformity SIP revision by November 25, 1994. The State of Alaska sent a transportation conformity SIP on November 6, 1994, and EPA approved this SIP on November 8, 1995 (60 FR 56244). EPA revised the transportation conformity rule on August 7, 1995 (60 FR 40098), November 14, 1995 (60 FR 57179), August 15, 1997 (62 FR 43780), and it was codified under 40 CFR part 51, subpart T and 40 CFR part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws (62 FR 43780). EPA's action of August 15, 1997, required the States to change their rules and send a SIP revision by August 15, 1998.

I. What is EPA Approving Today for Transportation Conformity and Why?

EPA is approving the Alaska Transportation Conformity Rule that the Governor of Alaska submitted on December 10, 1998 except for the incorporation by reference of sections 93.102(c), 93.102 (d), 93.104(d), 93.104(e)(2), 93.109(c)-(f), 93.118(e), 93.119(f)(3), 93.120(a)(2), 93.121(a)(1) and (b), and 93.124(b) of 40 CFR into AAC 50.710. The rationale for exclusion of these sections is discussed in Question K.

ADEC has adopted the Federal rules by ''incorporation by reference'' (except for the interagency consultation section 40 CFR 93.105 where they customized the rules for Alaska) ''Incorporation by Reference'' (IBR) means that the State adopted the Federal rules without rewriting the text of the Federal rules but by referring to them for inclusion as if they were printed in the state regulation. The Federal Transportation Conformity Rule required the states to adopt majority of the Federal rules in verbatim form with a few exceptions. The States can not make their rules more stringent than the Federal rules unless the State's rules apply equally to non-federal entities as well as Federal entities. The Alaska Transportation Conformity Rule is the same as the Federal rule and the State has made no additional changes or modifications, with the exception to the consultation section. EPA has evaluated this SIP revision and has determined that the State has fully adopted the Federal Transportation Conformity rules as described in 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. Also, the ADEC has completed and satisfied the public participation and comprehensive interagency consultations during development and adoption of these rules at the local level. Therefore, EPA is approving this SIP revision.

J. How did the State Satisfy the Transportation Conformity Interagency Consultation Process (40 CFR 93.105)?

EPA's rule requires the States to develop their own processes and procedures for interagency consultation among the Federal, State, and local agencies and resolution of conflicts meeting the criteria in 40 CFR 93.105. The SIP revisions must include processes and procedures to be followed by the MPO, State Department of Transportation (DOT), and the U.S. Department of Transportation (USDOT) in consulting with the State and local air quality agencies and EPA before making conformity determinations. Also, the transportation conformity SIP revision must have processes and procedures for the State and local air quality agencies and EPA in coordinating development of applicable SIPs with MPOs, State DOT, and USDOT. The State developed its own consultation rule based on the elements in 40 CFR 93.105, and excluded this section from IBR.

The Alaska consultation rule specifically addresses interagency consultation procedures between ADEC, the local air planning agency, Alaska Department of Transportation and Public Facilities, the local transportation agency, any agency created under state law that sponsors or approves transportation projects, the U.S. EPA, the Federal Highway Administration, and the Federal Transit Administration. The rule includes provision for consultation, review procedures, and conflict resolution for elements such as: discussion draft conformity determinations on transportation plans, programs, and projects; traffic demand modeling; regional emissions modeling; transportation control measures; and projects that should be considered regionally significant. It also includes provision for public review of conformity determinations.

K. What Parts of the Transportation Conformity Rule are Excluded?

EPA promulgated the transportation conformity rule on August 15, 1997. On November 4, 1997, the United States Court of Appeals for the District of Columbia Circuit held in Sierra Club v. Environmental Protection Agency, No. 96–1007, ruled that EPA's grace period violates the plain terms of the Act and, therefore, is unlawful. Based on this court action, EPA cannot approve 40 CFR 93.102(d). On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *Environmental Defense Fund* v. *Environmental Protection Agency,* No. 97–1637. The Court granted the environmental group's petition for review and ruled that 40 CFR 93.102(c)(1), 93.121(a)(1), and 93.124(b) are unlawful and remanded 40 CFR 93.118(e) and 93.120(a)(2) to EPA for revision to harmonize these provisions with the requirements of the Act for an affirmative determination the Federal actions will not cause or increase violations or delay attainment. The sections that were included in this decision were: (a) 40 CFR 93.102(c)(1) which allowed certain projects for which the National Environmental Policy Act (NEPA) process has been completed by the DOT to proceed toward implementation without further conformity determinations during a conformity lapse, (b) 40 CFR 93.118(e) which allowed use of motor vehicle emissions budgets (MVEB) in the submitted SIPs after 45 days if EPA had not declared them inadequate, (c) 40 CFR 93.120(a)(2) which allowed use of the MVEB in a disapproved SIP for 120 days after disapproval, (d) 40 CFR 93.121(a)(1) which allowed the non-federally funded projects to be approved if included in the first three years of the most recently conforming transportation plan and transportation improvement programs, even if conformity status is currently lapsed, and (e) 40 CFR 93.124(b) which allowed areas to use a submitted SIP that allocated portions of a safety margin to transportation activities for conformity purposes before EPA approval. Since the States were required to submit transportation conformity SIPs not later than August 15, 1998, and include those provisions in verbatim form, the State's SIP revision includes all those sections which the Court ruled unlawful or remanded for consistency with the Act. The EPA can not approve these sections. EPA believes that ADEC has complied with the SIP requirements and has adopted the Federal rules which were in effect at the time that the transportation conformity SIP was due to EPA. If the court had issued its ruling before adoption and SIP submittal by the ADEC, we believe the ADEC would have removed these sections from its IBR. The ADEC has expended its resources and time in preparing this SIP and meeting the Act's statutory deadline, and EPA acknowledges the agency's good faith effort in submitting the transportation conformity SIP on time. ADEC will be required to submit a SIP revision in the future when EPA revises its rule to comply with the court decision. Because the court decision has invalidated these provisions, EPA believes that it would be reasonable to exclude the corresponding sections of the state rules from this SIP approval action. As a result, we are not taking any action on the IBR of sections 93.102(c), 93.102 (d), 93.104(d), 93.104(e)(2), 93.109(c)-(f), 93.118(e), 93.119(f)(3), 93.120(a)(2), 93.121(a)(1) and (b), and 93.124(b) of 40 CFR at 18 AAC 50.710 under the State Transportation Conformity Rule. The conformity determinations affected by these sections should comply with the relevant requirements of the statutory provisions of the Act underlying the court's decision on these issues. The EPA will be issuing guidance on how to implement these provisions in the interim prior to EPA amendment of the federal transportation conformity rules. Once these Federal rules have been revised, conformity determinations in Alaska should comply with the requirements of the revised Federal rule until corresponding provisions of the Alaska conformity SIP have been approved by EPA.

II. Summary of Action

EPA approves and takes no action on certain regulations found in 18 AAC 50, 52, and 53, which were submitted for inclusion into Alaska's SIP. EPA also approves deletions listed below from the Alaska SIP.

18 AAC 50 Approvals

EPA approves sections 700, 705, 710 except for the incorporation by reference of sections 93.102(c), 93.102 (d), 93.104(d), 93.104(e)(2), 93.109(c)-(f), 93.118(e), 93.119(f)(3), 93.120(a)(2); 715, and 720.

18 AAC 50 No Action

As stated in ''D'', EPA takes no action on the remainder of those regulations submitted on September 10, 1998, found in Articles 1–9, 18 AAC 50.

18 AAC 52

The 18 AAC 52 Inspection and Maintenance Air Quality Program and Regulations that are approved by EPA are: Effective January 1, 1998, Section 005; 010; 015; 020; 025; 035; 037; 050; 060, except for subsections (8)(c), (8)(d)(2) and (8)(e); 065; 070; 080; 085; 095; 100; 105; 400; 405; 415, except subsection (f)(1); 420, except subsection (a)(11); 425; 440; 500; 515; 520, except subsection (c)(9); 525; 527; 530, except subsections (b)(3), (c)(4)(C) and (d)(9); 535; 540; 545; 546; 990.

Effective January 1, 1997: Section 055; 090.

Remove the following provisions of 18 AAC 52: effective January 1, 1997, Section 060, subsection 8 (c) and 8 (e); Section 520, subsection (c)(9).

Remove the following provisions of 18 AAC 52: effective January 1, 1998: Section 060, subsection 8 (d)(2); Section 415, subsection (f)(1); Section 420, subsection (a) (11); Section 530, subsection (b)(3) and (d)(9).

Remove the following provisions of 18 AAC 52, effective January 4, 1995: Section 530, subsection (c) (4)(c).

The 18 AAC 53 Fuel Requirements for Motor Vehicles Regulations that are approved by EPA are: Effective October 31, 1997, Section 05; 07; 10; 20; 30; 35; 40; 45; 60; 70; 80; 90; 200; 105; 120; 130; 140; 150; 160; 170; and 190; and effective September 4, 1998, 18 AAC 53.990.

Remove the following provision of 18 AAC 53.015, Expansion of Control Area, effective October 31, 1997.

EPA also approves numerous edits, updates, and improved reorganization to the narrative portions of Alaska's CO SIP for easier reading and understanding.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective February 28, 2000 without further notice unless the Agency receives adverse comments by January 28, 2000.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 28, 2000 and no further action will be taken on the proposed rule.

III. 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.''

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation. This direct final rule 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, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

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

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. 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 February 28, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: December 10, 1999.

Chuck Clarke,

Regional Administrator, Region 10.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart C—Alaska

2. Section 52.70 is amended by adding paragraph (c) (29) to read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(29) The Environmental Protection Agency (EPA) approves various amendments to the Alaska State Air Quality Control Plan which are contained in three separate submittals to EPA, dated February 6, 1997, June 1, 1998, and September 10, 1998, and which include the inspection and maintenance program.

(i) Incorporation by reference.

(A) Air Quality Control Regulations, 18 AAC 50.

Effective September 4, 1998: Section 700; Section 705; Section 710 (except for the incorporation by reference of sections 93.102(c), 93.102 (d), 93.104(d), 93.104(e)(2), 93.109(c)-(f), 93.118(e), 93.119(f)(3), 93.120(a)(2), 93.121(a)(1) and (b), and 93.124(b) of 40 CFR); Section 715; and Section 720.

(B) Emissions Inspection and Maintenance Requirements for Motor Vehicles 18 AAC 52.

(1) Effective January 1, 1998: Section 005; Section 010; 015; 020; 025; 035; 037; 050; 060, except for subsections (8)(c), (8)(d)(2) and (8)(e); 065; 070; 080; 085; 095; 100; 105; 400; 405; 415, except subsection (f)(1); 420, except subsection (a)(11); 425; 440; 500; 515; 520, except subsection (c)(9); 525; 527; 530, except subsections (b)(3), (c)(4)(C) and (d)(9); 535; 540; 545; 546; 990.

(2) Effective January 1, 1997: Section 055; 090.

(3) Remove the following provisions of 18 AAC 52, effective January 1, 1997: Section 060, subsection 8 (c) and 8 (e); Section 520, subsection (c)(9).

(4) Remove the following provisions of 18 AAC 52, effective January 1, 1998: Section 060, subsection 8 (d)(2); Section 415, subsection (f)(1); Section 420, subsection (a) (11); Section 530, subsection (b)(3) and (d)(9).

(5) Remove the following provisions of 18 AAC 52, effective January 4, 1995: Section 530, subsection (c) (4)(c).

(C) Fuel Requirements for Motor Vehicles 18 AAC 53.

(1) Effective October 31, 1997: Section 05; 07; 10; 20; 30; 35; 40; 45; 60; 70; 80; 90; 200; 105; 120; 130; 140; 150; 160; 170; 190 and effective September 4, 1998, Section 990.

(2) Remove the following provision of 18 AAC 53.015, Expansion of Control Area, effective October 31, 1997.

(ii) Additional Material.

(A) Revisions to Alaska's State Air Quality Control Plan, Volume II: Section I, ''Background,'' I.A; I.B., I.C., I.D., and I.E., adopted 11/26/96; Part B—Anchorage Contingency Measures, adopted 5/18/98; Section II, ''State Air Quality Control Program,'' pages II–1 through II–4, adopted 5/18/98; Section III.A. ''Statewide Carbon Monoxide Control Program,'' pages III.A.1–1 through III.A.3–4, adopted 5/18/98; III.B. ''Anchorage Transportation Control Program,'' pages III.B.1–1 through III.B.6–7, adopted 5/18/98; III.B.8. ''Modeling and Projections,'' pages III.B.8–1 through III.B.9–2, adopted 5/18/98; III.B.10, ''Anchorage Air Pollution Episode Curtailment Plan,'' pages III.B.10–1 and III.B.10–2, revised 12/19/93; III.B.11. ''Assurance of Adequacy,'' pages III.B.11–1 through III.B.11–3, revised 5/18/98; III.B.12. ''Emissions Budget,'' page III.B.12–1, adopted 11/26/96; and various CO SIP streamlining edits throughout Volume II and Volume III of the State Air Quality Control Plan which make the document easier to read and better organized, adopted 5/18/98.

[FR Doc. 99–33525 Filed 12–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185 and 186

[OPP–300961; FRL–6484–8]

RIN 2070–AB78

Phosphine; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Tolerances are being revised and consolidated for residues of phosphine in or on certain agricultural commodities and animal feeds. None of these tolerances are new, although the change will facilitate new application methods. The Agency is merely changing the tolerance expression to eliminate references concerning how the phosphine is generated. The Agency published a detailed discussion of the change in the tolerance expression, including a risk assessment, on June 9, 1999, as a proposed rule.

DATES: This regulation is effective December 29, 1999. Objections and requests for hearings, identified by docket control number OPP–300961, must be received by EPA on or before February 28, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION'' section. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300961 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis McNeilly, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308-6742; and e-mail address: McNeilly.Dennis@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.*You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300961. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday,

excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of June 9, 1999 (64 FR 30939) (FRL–6082–4), EPA issued a proposed rule pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the revision of phosphine tolerances to eliminate references as to how the gas is generated and consolidating the tolerances for phosphine in 40 CFR 180.225. The proposed rule included a detailed discussion of the proposed change prepared by the Agency. The Agency completed the Reregistration Eligibility Decision (RED) for Aluminum and Magnesium Phosphide in December 1998 (EPA 738–R–98–017). That risk assessment evaluated the acute and chronic risk from dietary exposure to phosphine residues. For the reasons stated in the proposed rule, EPA concludes that modifying the phosphine tolerance as described above will be safe.

EPA received several minor comments on the proposed rule and those comments are addressed below. EPA has made minor changes to the language in the tolerance regulation to clarify EPA's intent.

1. *Comment.* Several individuals pointed out a typographical error in the listing of the tolerance for phosphine in or on animal feed. The existing aluminum phosphide and magnesium phosphide tolerances for animal feeds was incorrectly listed as 0.01 ppm rather than the actual value of 0.1 ppm.

Response. The existing tolerances for residues of phosphine in or on animal feeds from fumigation with aluminum phosphide or magnesium phosphide is 0.1 ppm (40 CFR 186.200 and 40 CFR 186.3800). Tolerances will be consolidated into a new 40 CFR 180.225, the tolerance level published in this final rule remains unchanged, i.e., remains at the 0.1 ppm level. The Agency does note that the tolerance is associated with the requirement to aerate fumigated finished feed for 48 hours before use. The Agency is not modifing this restriction and it will remain in effect unless data are provided indicating some other time interval is more appropriate for any new products or new application method. The 48-hour aeration interval is appropriate for all currently registered products; however, in the future other products may apply phosphine gas in a different manner from the existing technology and any limitations or guidance to ensure that tolerances are not exceeded will be provided on the products labels.

2. *Comment.* Legume vegetables (succulent or dried - excluding soybeans) are listed in the proposed tolerances under raw agricultural commodities (RACs). The present listing specifies vegetables, seed and pod (except soybeans). Are these listings equivalent?

Response. The new listing ''Legume vegetables (succulent or dried - excluding soybeans)'' is equivalent to the previous tolerance listing with the exception that it does not include dill and okra. Therefore, tolerances for these two commodities dill and okra are added to 40 CFR 180.225 to make the transition equivalent. The additional tolerances for dill and okra do not change existing cultural practice or the dietary exposure of the U.S. population or any population subgroup to phosphine.

3. *Comment.* It has been suggested that residues from zinc phosphide be included in this tolerance expression.

Response. The Agency considered this but decided that the use patterns of this rodenticide is significantly different from the fumigation uses of phosphine gas and therefore any residues from that type of use are not specifically included in this tolerance document. In addition, separate REDs were prepared for these very different formulations and use patterns. Aluminum and magnesium phosphide were also evaluated together in the same RED, while zinc phosphide was evaluated in a separate RED.

4. *Comment.* Under RACs, the tolerance for coffee, bean, green is listed as 0.1 ppm. What is the tolerance for roasted coffee beans? The tolerance as presently written does not distinguish between the green and roasted beans.

Response. The Agency revised tolerance nomenclature to avoid ambiguity. The previous tolerance was for ''beans, coffee'' while the new definition makes it clear that the tolerance is for ''Coffee, beans, green.'' Unless processed commodities have different tolerances, the established tolerance for the RAC applies, in this case 0.1 ppm. A similar comment/ question was also asked concerning cottonseed, i.e. what is the tolerance for delinted cottonseed? The new listing is for ''cotton, seed, undelinted.'' Once again, unless a tolerance is established for a processed commodity the tolerance for the commodity's RAC applies, in this case the tolerance for ''cotton, seed, undelinted'' which is 0.1 ppm. As stated in the summary, this rule eliminates references as to how the phosphine gas is generated, no tolerance levels are changed in this rule.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300961 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 28, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Room M3708, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A. of this preamble, you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. of this preamble. Mail your copies, identified by docket number OPP–300961, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. of this preamble. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule establishes a new tolerance expression for phosphine under section 408(d) of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

The Agency has determined that this action will not have a substantial direct effect on 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, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' This final rule directly regulates fumigators, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

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

V. Submission to Congress and the Comptroller General

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

List of Subjects

40 CFR Part 180

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

40 CFR Part 185

Environmental protection, Food additives, Pesticides and pests.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and pests.

Dated: December 17, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. In part 180:

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

Authority: 21 U.S.C. 321(q), (346a) and 371.

b. Section 180.225 is revised to read as follows:

§ 180.225 Phosphine; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of phosphine in or on the following raw agricultural commodities (RACs) resulting from post-harvest fumigation for the control of insects with phosphine gas or phosphide compounds that produce phosphine gas.

Commodity	Parts per million
Almond	0.1
Avocado	0.01
Banana (includes Plantains)	0.01
Barley, grain	0.1
Brazil nut	0.1
Cabbage, Chinese	0.01
Cacao bean, dried bean	0.1
Cashew	0.1
Citrus citron	0.01
Coffee, bean, green	0.1
Corn, field, grain	0.1
Corn, pop, grain	0.1
Cotton, undelinted seed	0.1
Date, dried fruit	0.1
Dill, seed	0.01
Eggplant	0.01
Endive	0.01
Filbert	0.1
Grapefruit	0.01
Kumquat	0.01
Legume vegetables (succulent or dried group, excluding soybeans)	0.01
Lemon	0.01
Lettuce	0.01
Lime	0.01
Mango	0.01
Millet, grain	0.1
Mushroom	0.01
Oat, grain	0.1
Okra	0.01
Orange	0.01
Papaya	0.01
Peanut	0.1
Pecan	0.1
Pepper	0.01
Persimmon	0.01
Pimento	0.01
Pistachio	0.1
Rice, grain	0.1
Rye, grain	0.1
Safflower, seed	0.1
Salsify tops	0.01
Sesame, seed	0.1
Sorghum, grain	0.1
Soybean, seed	0.1
Sunflower, seed	0.1
Sweet potato	0.01
Tangelo	0.01
Tangerine	0.01
Tomato	0.01
Walnut	0.1
Wheat, grain	0.1

(2) Tolerances are established for residues of the fumigant in or on all RACs resulting from preharvest treatment of pest burrows in agricultural and non-crop land areas.

Commodity	Parts per million
All RACs resulting from preharvest treatment of pest burrows	0.01

(3) Residues resulting from fumigation of processed foods:

Commodity	Parts per million
Processed foods	0.01

(4) *Residues resulting from fumigation of animal feeds:*

Commodity	Parts per million
Animal feeds	0.1

(5) To assure safe use of this pesticide, it must be used in compliance with the labeling conforming to that registered by the U.S. Environmental Protection Agency (EPA) under FIFRA. Labeling shall bear a restriction to aerate the finished food/feed for 48 hours before it is offered to the consumer, unless EPA specifically determines that a different time period is appropriate. Where appropriate, a warning shall state that under no condition should any formulation containing aluminum or magnesium phosphide be used so that it will come in contact with any processed food, except processed brewer's rice, malt, and corn grits stored in breweries for use in the manufacture of beer.

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

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

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

§ 180.375 [Removed]

b. Section 180.375 is removed.

PART 185—[AMENDED]

2. In part 185:

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

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

§ 185.200 [Removed]

b. Section 185.200 is removed.

§ 185.3800 [Removed]

c. Section 185.3800 is removed.

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 342, 348, and 371.

§ 186.200 [Removed]

b. Section 186.200 is removed.

§ 186.3800 Removed

c. Section 186.3800 is removed.

[FR Doc. 99–33332 Filed 12–28–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102; FCC 99–352]

Wireless Radio Services; Compatibility With Enhanced 911 Emergency Calling Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: In this document the Commission decides various issues raised in petitions for reconsideration and clarification of the wireless Enhanced 911 (E911) rules that request the removal of ambiguities in the rules and the adoption of modifications to enhance Phase I implementation. Resolution of these issues should address delays in implementation of Phase I service. The Commission also resolves such issues in order to ensure implementation of Phase II and avoid potential delays in the provision of vital Phase II services. Finally, the Commission takes action to overcome obstacles in Commercial Mobile Radio Service carriers' ability to comply with the schedule and requirements that apply to their implementation of E911, consistent with the Commission's goals in adopting the framework for E911.

DATES: Effective April 27, 2000. Public comment on the information collection are due February 28, 2000, and comments by the Office of Management and Budget are due April 27, 2000.

ADDRESSES: A copy of any comments on the information collection contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, D.C. 20554, or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Barbara Reideler, 202–418–1310. For further information concerning the information collection contained in this Report and Order, contact Judy Boley, Federal Communications Commission, 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Memorandum Opinion and Order (Second MO&O) in CC Docket No. 94–102; FCC 99–352, adopted November 18, 1999, and released December 8, 1999. The complete text of this Second MO&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, S.W., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, S.W., Washington, DC.

Synopsis of the Second Memorandum Opinion and Order

1. In this Second Memorandum Opinion and Order (Second MO&O), the Commission takes steps to hasten the introduction and rollout of wireless Enhanced 911 (E911) services that were required by the Commission when it adopted E911 rules in the Report and Order. (61 FR 40348, August 2, 1996.) The Commission seeks to accelerate implementation of this important service in order to enable wireless callers to obtain emergency assistance more rapidly and efficiently through the transmission of certain enhanced information that assists in locating the caller. Wireless subscribership continues to grow rapidly and wireless phones are used increasingly to place 911 calls in emergency situations. The Commission adopted E911 rules in accordance with an agreement between the wireless industry and State and local 911 officials to promote wireless technologies and transmissions that provide important information to enable the 911 Public Safety Answering Point (PSAP) to promptly locate the 911 caller. The wireless E911 service was established to ensure that wireless phones automatically transmit the same vital data about a 911 caller's location as wireline phones.

2. The Commission reaffirmed its commitment to the goals for a wireless E911 service in the E911 First Reconsideration Order. (63 FR 02631, January 16, 1998) Accordingly, covered Commercial Mobile Radio Service (CMRS) carriers were expected to achieve transmission of the enhanced

location information in two phases, with Phase I to begin April 1, 1998. The Commission subsequently received petitions from BellSouth Corporation (BellSouth) and the Cellular Telecommunications Industry Association (CTIA) for further reconsideration and for clarification of the E911 rules that request the removal of ambiguities in the rules and the adoption of modifications to enhance Phase I implementation. In this Second MO&O, the Commission decides the various issues raised in the petitions for reconsideration and clarification. Resolution of these issues should address delays being experienced in implementation of Phase I service. In addition, the Commission resolves such issues in order to ensure implementation of Phase II and avoid potential delays in the provision of vital Phase II services. The Commission also takes action to overcome obstacles in CMRS carriers' ability to comply with the schedule and requirements that apply to their implementation of E911, consistent with the Commission's goals in adopting the framework for E911.

3. First, the E911 rules are revised to remove the prerequisite that a cost recovery mechanism for carriers be in place before the CMRS carrier is obligated to provide E911 service in response to a valid PSAP service request. The Commission agrees with CTIA that modification of the rule is necessary to remove ambiguities that are causing delays in Phase I implementation and that, more significantly, may delay implementation of Phase II. The Commission declines to modify the rule, as suggested by commenters, by imposing certain requirements on the States to adopt formal mechanisms for the recovery of carrier costs and to adhere to certain definitions and procedures as the means to clarify the rule and facilitate implementation. Instead, the Commission finds that the disputes and delays that have arisen in the consideration and implementation of cost recovery mechanisms for carrier costs, in some instances, have become, and will continue to be, significant and unnecessary impediments to Phase I implementation. Moreover, the Commission finds that the disputes and delays also will be a problem in the implementation of Phase II.

4. Although a number of States have decided that separate E911 cost recovery mechanisms are the best way to recover carriers' costs of implementing E911, such mechanisms are not necessary to permit CMRS carriers, whose rates are not regulated, to recover their costs. As a result, the Commission sees no need to make the obligations of carriers to implement E911 service contingent on the resolution of carrier cost recovery issues. However, in removing the condition that a cost recovery mechanism for carriers' costs be in place before the carrier is obligated to provide E911 service, the Commission does not intend to disturb the actions of States or localities that already have adopted such mechanisms or to discourage them from deciding that cost recovery or sharing mechanisms that cover carrier costs are an effective way of expediting wireless E911 for their citizens, especially in rural areas.

5. At the same time, adequate funding of PSAPs to enable them to deploy the upgrades to use wireless E911 location information remains essential to implementation. State and local authorities have to provide their local public safety officials with the means needed to request and use wireless E911 location information. Otherwise, PSAPs will be unable to dispatch emergency services to wireless 911 callers in life-threatening situations as quickly as possible. In these circumstances, the Commission modifies the rule to retain a cost recovery requirement for recovery of the PSAP's costs of E911 service. Thus, while the Commission no longer conditions a carrier's obligation on a cost recovery mechanism to be in place for the carrier's costs, the obligation continues to be conditioned upon the carrier receiving a valid request from the PSAP that is capable of receiving and utilizing the data elements associated with the service. Inasmuch as those capabilities often were achieved through mechanisms that included carrier costs, the Commission modifies that condition to ensure that States or localities continue to address the needs of the PSAPs to be upgraded for wireless E911.

6. Accordingly, before a carrier is required to provide E911 services pursuant to a PSAP request, the PSAP must have the means of covering its costs of receiving and utilizing the E911 information to ensure the request is valid. As modified, the carrier's E911 service obligation is triggered when the carrier receives a valid request from a PSAP that is capable of receiving and utilizing the data elements associated with the service, and a mechanism for recovering the PSAP's cost of the E911 service is in place. The Commission does not mandate any specific State action, nor do we define the nature and extent of any funding mechanism or other approach that may achieve the necessary technology and service capabilities that enable the PSAP to make a valid service request.

7. Second, the Commission agrees with CTIA that disputes between CMRS carriers and PSAPs on the choice of the transmission means and related technologies also have caused delays in Phase I implementation. The Commission declines, however, to establish in the E911 rules that the carriers, and not the PSAP, should have the final choice as the means to overcome the delays. Instead, given our elimination of a cost recovery mechanism for carriers as a prerequisite for E911 implementation, the Commission concludes that negotiation between the parties, presumptively based on the alternative methods adopted in the official standard, is the best means in most instances to ensure an expeditious selection of transmission method that meets the individual requirements of the PSAP and carrier in each situation. However, in the event that an impasse arises, Commission staff will be available to help resolve these disagreements on an expedited basis, based on consideration of a number of specific factors. These include the additional costs of the two methodologies to the PSAP and the wireless carrier, whether the carrier is paying for its own E911 implementation costs or receiving funding from a State-sponsored cost recovery mechanism, the technical configuration of the PSAP's existing E911 system, and the ability of the transmission technology to accommodate Phase II of wireless E911 and other planned changes in the E911 system.

8. Third, we find that this Commission and the relevant State public service commissions can address the issues concerning local exchange carriers (LECs) that are identified as potential reasons for delay in the implementation of E911. LECs are important factors in achieving E911 implementation, inasmuch as State 911 systems are LEC-based. Although the Commission has not, at this point, imposed special obligations on incumbent LECs in implementing E911, we note that incumbent LECs are already subject to obligations under the Telecommunications Act of 1996, as well as various Federal and State regulations, to ensure that interconnection agreements with CMRS carriers are fulfilled promptly and fairly. The Commission intends to further monitor the role of LECs to determine whether we need to impose additional obligations on them to ensure implementation of our wireless E911 rules. The Commission notes that parties may request consideration under our rocket docket procedures of

complaints filed under section 208 of the Communications Act against LECs for violation of LECs' existing obligations.

9. Finally, the Commission modifies the Phase I rule to conform with the E911 Orders (cited in paragraphs 1 and 2 of this synopsis) and clarifies that carriers are required to provide service within six months of a PSAP's request for Phase I service when the request is received after the date established in the rules. In addition, the Commission finds the requests in CTIA's petition to protect carriers from liability for providing E911 service and to mandate nationwide usage of 911 as the number for emergency assistance are moot. The Wireless Communications and Public Safety Act of 1999 (911 Act) requires that States provide CMRS carriers, users, and PSAPs involved in the transmission of wireless 911 and E911 calls with liability protection to the same extent the State provides protection with respect to wireline 911 services. The 911 Act also provides for the Commission to designate 911 as the universal emergency telephone number for both wireline and wireless telephone service and includes provisions for transition periods and Commission action to encourage the development of State-wide E911 systems. Insofar as the petition also requests that the Commission encourage federal agencies to make federal property available for the siting of wireless facilities, we find the request to be beyond the scope of this proceeding. The United States Congress is the preferable forum for addressing this issue, as well.

10. The goals of this proceeding are to maintain the framework the Commission established to achieve the E911 service intended to provide the customers of wireless carriers with improved emergency response services. This relies on the voluntary efforts of wireless and wireline providers, manufacturers, third-party providers, State and local governments, public safety authorities, and consumer interest groups to achieve the necessary transmissions and provide the emergency assistance required by the public. The Commission adopted the E911 rules to ensure that CMRS licensees developed the capabilities to achieve enhanced transmission of 911 calls and respond promptly when localities request service. The Commission is concerned by delays in the implementation of Phase I of the E911 service and addresses obstacles to that implementation in order to take appropriate action for their removal. The Commission is also concerned about the potential delays to Phase II implementation that are likely to result unless such obstacles are removed. The Commission's actions in this MO&O are intended to build on the progress that has been made and to expedite E911 implementation. Any unnecessary delay in deployment and effective, universal operation of E911 is undesirable.

11. The Commission's actions also are consistent with the Congressional goals reflected in the newly enacted 911 Act. The purpose of the 911 Act is ''to encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure for communications, including wireless communications, to meet the Nation's public safety and other communications needs.'' Among other things, the 911 Act requires this Commission, or its delegatee, to designate 9–1–1 as ''the universal emergency telephone number within the United States.'' The Commission also is specifically directed to encourage and support efforts by States to deploy comprehensive end-to-end emergency communications infrastructure and programs, based on coordinated statewide plans that include a ubiquitous wireless network and wireless E911 service. The Commission plans to move forward promptly to implement these Congressional goals, including through the initiation of a rulemaking proceeding.

Paperwork Reduction Act of 1995 Analysis

12. The actions contained in this Second MO&O have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose a new reporting requirement or burden on the public. Implementation of this new reporting requirement will be subject to approval by the Office of Management and Budget, as prescribed by the Act. The new paperwork requirement contained in the Second MO&O will go into effect April 27, 2000.

Final Regulatory Flexibility Analysis

13. As required by the Regulatory Flexibility Act (RFA),[1] a Final Regulatory Flexibility Analysis (FRFA) was incorporated into the Report and Order and Further Notice of Proposed Rulemaking (E911 First Report and Order) in this proceeding. This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) in this Second Memorandum Opinion and Order (Second MO&O) contains information that is in addition to that contained in the FRFA. This Supplemental FRFA is limited to matters addressed in this Second Memorandum Opinion and Order. Specifically, the Order addresses petitions for further reconsideration and clarification of the E911 First Report and Order and the responsive pleadings, which were filed in response to the First Memorandum Opinion and Order (E911 First Reconsideration Order). The Commission sought to augment the record and requested that an Implementation Report be filed on the matters to be addressed. Upon the filing of the Implementation Report, the Commission requested written public comment on the proposals in the petitions and the Implementation Report. The petitions, the Implementation Report, and the responsive comments that were filed for consideration in the Second Memorandum Opinion and Order are discussed in this Supplemental FRFA. This Supplemental FRFA conforms to the RFA. (*See* 5 U.S.C. 604.)

14. This is a summary of the full Supplemental FRFA. The full Supplemental FRFA may be found in Appendix C of the full text of this Second MO&O.

I. Need for, and Objectives of, the Second Memorandum Opinion and Order

15. This Second MO&O takes steps to hasten the introduction and rollout of wireless Enhanced 911 (E911) services that were required under the E911 service rules adopted in the E911 First Report and Order. The petitions for reconsideration and clarification of the E911 rules, the Implementation Report, and the responsive comments have identified a number of obstacles to the ability of carriers to comply with the schedule and performance requirements in the E911 rules. This Second MO&O aims to eliminate such delays and obstacles, and so to encourage prompt implementation of the E 911 rules.

II. Summary of Significant Issues Raised by the Public Comments in Response to the Petitions for Reconsideration and Clarification and the Implementation Report

16. In the petitions for reconsideration and clarification, some issues were raised that might affect small entities. Comments from some rural carriers and the Rural Cellular Association (RCA) argued that small and rural carriers would benefit if the cost recovery rule were amended to require States to

[1] *See* 5 U.S.C. 604. The RFA, *see* 5 U.S.C. 601 *et seq.*, was amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

provide for the recovery of carriers' E911 costs through the adoption of pooling cost recovery mechanisms. They requested that the rule include requirements and procedures to ensure that the State legislatures adopt such mechanisms for carrier recovery and to overcome the delays under the current rule. The Association of Public-Safety Communications Officials-International, Inc. (APCO) alternatively argued that rural carriers and areas and PSAPs would benefit by elimination of the cost recovery rule and the complex, expensive, time-consuming process of achieving cost recovery mechanisms for carriers with State legislatures.

17. The Commission declined to adopt the specific definitions for carrier cost recovery, because they would be difficult to apply and would increase the delays already experienced in establishing State-adopted mechanisms as a prerequisite to E911 service. The Commission found that the cost recovery rule for carrier costs was unnecessary and eliminated the rule, giving carriers and States the option of such mechanisms while removing the obstacle to E911 implementation that resulted from carriers waiting for such a mechanism before initiating service. The Commission modified the rule to require that a PSAP cost recovery mechanism be in place, however, to ensure that States or localities funded PSAPs to enable PSAPs to request and provide vital E911 services.

18. CTIA and some carriers requested that the E911 rules be clarified to give carriers, and not PSAPs, the authority to choose which of the two official transmission means to use in transmitting E911 data to the PSAP in order to resolve disputes and expedite E911 implementation. The Public Safety Associations opposed the request, arguing that carrier choice would be too costly for many PSAPs and would fail to take into account the need to integrate with the PSAPs' systems. The Commission declined to adopt a rule on transmission choice as unnecessary and inappropriate, determining that any disputes should be resolved by the elimination of the carrier cost recovery rule and that negotiation between the parties was essential to ensure that a compatible transmission means is selected. The Commission provided the parties an opportunity to petition the Commission in the rare event of an impasse for a resolution.

19. Finally, the Implementation Report requested the Commission investigate the role of LECs and the delays in E911 implementation that result when LECs fail to cooperate with wireless carriers and promptly establish the necessary interconnection with the LEC's 911 system to enable the wireless carrier to transmit E911 data to the PSAP. The Commission declined to conduct such an investigation as unnecessary and problematic. The Commission encouraged incumbent LECs to fulfill their obligations under several federal and State regulations that require prompt and fair interconnection agreements, noted that wireless carriers may file complaints for expedited treatment under the federal regulations, and intended to monitor the role of LECs to ensure that wireless E911 was being implemented promptly.

20. A more detailed discussion on issues raised by public comments may be found in section II of Appendix C to the full text of this decision.

III. Description and Estimates of the Number of Small Entities to Which the Rule Modifications and Decisions in the Second Memorandum Opinion and Order Will Apply

21. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. (5 U.S.C.603 (b)(3)). The RFA generally defines the term ''small entity'' as having the same meaning as the term ''small business.'' (5 U.S.C. 601(6)). In addition, the term ''small business'' has the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' (5 U.S.C. 601(6)), incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). (Small Business Act, 15 U.S.C. 632 (1996).) ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less that 50,000'' (5 U.S.C. 601(5)); using Census Bureau data we estimate that 81,600 are small entities.

22. *SMR Licensees.* Pursuant to § 90.814(b)(1) of the Commission's Rules, the Commission has defined ''small business'' for purposes of auctioning 900 Mhz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels as a firm that has had average annual gross revenues of $15 million or less in the three preceding calendar years. This small business size standard for all 800 MHz and 900 MHz auctions has been approved by the SBA. The rule modification in this Second MO&O that eliminates the requirement for a carrier cost recovery mechanism affects all SMR licensees that were previously subject to the rule. That rule was limited to SMR licensees that offer real-time, two-way voice or data service that is interconnected with the public switched network and that use an in-network switching facility.

23. The Commission concludes that the number of small 900 MHz SMR geographic area licensees affected by the rule modification that eliminates the rule for carrier cost recovery is at least 60. Additionally, the Commission estimates at least 10 small 800 MHz SMR geographic area licensees for the upper 200 channels affected by the rule modification that eliminates that rule for carrier cost recovery.

24. The Commission has determined that 3325 geographic area licenses will be awarded in the 800 MHz SMR auction for the lower 230 channels. Because the auction of these licenses has not yet been conducted, there is no basis to estimate how many winning bidders will qualify as small businesses or which of these licensees would have been covered by the previous rule. Therefore, the Commission concludes that the number of 800 MHz SMR geographic area licensees for the lower 230 channels that may ultimately be affected by this rule modification is at least 3325.

25. Finally, the Commission concludes that the number of SMR licensees operating in the 800 MHz and 900 MHz bands under extended implementation authorizations that may be affected by this rule modification is, at most, 6800 licensees.

26. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entities is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. The Commission concludes that there are fewer than 732 small cellular service carriers that may be affected by the rule

modification that eliminates the requirement for a carrier cost recovery mechanism adopted in this Second Memorandum Opinion and Order.

27. *Broadband Personal Communications Service.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. The Commission concludes that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

28. *Public Safety Answering Points.* A PSAP is ''a point that has been designated to receive 911 calls and route them to emergency service personnel.'' (47 CFR 20.3.) Neither the Commission nor the SBA has developed a definition of small businesses specifically directed towards PSAPs. The category for small businesses that are within the SIC code 4899, ''Communications Services, Not Elsewhere Classified,'' contains entities that have an annual revenue of $11 million or less. We can estimate that the small entities affected by the rule modifications are approximately 10,000 PSAPs nationwide. The Commission assumes that, for purposes of this Supplemental FRFA, all of the PSAPs may be affected by the rule modifications.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

29. The Second MO&O modifies the rule for a cost recovery mechanism, first, to eliminate the requirement that the mechanism provide for the recovery of the carrier's costs of implementing E911 as a precondition of service. Second, the cost recovery rule is modified to provide a recovery mechanism for the PSAP's E911 costs as a precondition of the carrier's service. The Second MO&O also provided wireless carriers and PSAPs with an opportunity to petition the Commission in the rare case that they reach an impasse in their negotiations to choose the means of transmission for E911, but did not adopt any rule or otherwise impose any compliance requirements to govern such voluntary petitions.

V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

30. The rule modifications and decisions adopted in the Second MO&O are in response to the petitions for reconsideration and clarification of the E911 rules, the Implementation Report, and the responsive pleadings that, for purposes of this analysis, the Commission has considered to be filed by small entities, as discussed in section V of Appendix C of the full text of this decision.

31. *Report to Congress:* The Commission will send a copy of this Second Memorandum Opinion and Order, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Second Memorandum Opinion and Order and this Supplemental FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

32. Accordingly, the Petitions for Reconsideration and Clarification of the Memorandum Opinion and Order, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Calling Systems, are granted in part, as provided in the text of the Second Memorandum Opinion and Order, and are otherwise denied.

33. The late-filed Comments of Wireless Consumers Alliance are accepted.

34. The request for declaratory ruling of the Attorney General of the State of Washington is dismissed as moot.

35. Part 20 of the Commission's Rules is amended as reflected in the Rule Changes portion of this synopsis.

36. The Second Memorandum Opinion and Order and its rule amendments shall become effective April 27, 2000. The Commission will publish a document at a later date announcing OMB approval of the information collection requirements.

37. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Second Memorandum Opinion and Order, including the Supplementary Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Association.

Paperwork Reduction Act

38. This Second MO&O contains a new information collection.

39. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collections contained in this Second MO&O, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due February 28, 2000. Comments should address: (a) Whether the new collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: N.A.

Title: Revision of the Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems, Second Memorandum Opinion and Order.

Form No. N.A.

Type of Review: New information collection.

Respondents: Business or other for profit.

Number of Respondents: 50.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 50 hours (one-time burden).

Cost to Respondents: .0.

Needs and Uses: The information required to be reported to the Commission by CMRS carriers and PSAPs who cannot agree on the choice of the transmission means and related technologies will be used by the Commission to resolve such disputes.

List of Subjects in 47 CFR Part 20

Communications common carrier, Communications equipment, Radio.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 20 as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 251–254, 303, and 332 unless otherwise noted.

2. Section 20.18 is amended by revising paragraphs (d)(1) and (j) to read as follows:

§ 20.18 911 Service.

* * * * *

(d) *Phase I enhanced 911 services.* (1) As of April 1, 1998, or within six months of a request by the designated Public Safety Answering Point as set forth in paragraph (j) of this section, whichever is later, licensees subject to this section must provide the telephone number of the originator of a 911 call and the location of the cell site or base station receiving a 911 call from any mobile handset accessing their systems to the designated Public Safety Answering Point through the use of ANI and Pseudo-ANI.

* * * * *

(j) *Conditions for enhanced 911 services.* The requirements set forth in paragraphs (d) through (h) of this section shall be applicable only if the administrator of the designated Public Safety Answering Point has requested the services required under those paragraphs and is capable of receiving and utilizing the data elements associated with the service, and a mechanism for recovering the Public Safety Answering Point's costs of the enhanced 911 service is in place.

* * * * *

[FR Doc. 99–33391 Filed 12–28–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36 and 54

[CC Docket No. 96–45; FCC 99–306]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of the rules governing its existing support mechanism to ensure that support for rural carriers is not substantially changed when non-rural carriers are removed from that mechanism and transitioned to the new forward-looking support mechanism. The document was published in the **Federal Register** on December 1, 1999. Some of the rules contained information collection requirements.

DATES: The amendments to 47 CFR 36.611(h), 36.612, 54.307(b), (c), 54.309(c), 54.311(c), and 54.313 published at 64 FR 67416 (December 1, 1999) became effective on December 15, 1999.

FOR FURTHER INFORMATION CONTACT: Jack Zinman, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: On October 21, 1999, the Commission adopted an order adopting a new specific and predictable forward-looking mechanism that will provide sufficient support to enable affordable, reasonably comparable intrastate rates for customers served by non-rural carriers. That document also addressed specific methodological issues relating to the calculation of forward-looking support, including the area over which costs should be averaged; the level of the national benchmark; the amount of support to be provided for costs above the national benchmark; the elimination of the state share requirement; and the targeting of the statewide support amount. A summary was published in the **Federal Register**. See 64 FR 67416, December 1, 1999. Some of the rules contained information collection requirements. We stated that the "rules contain information collections that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of these rules." The information collections were approved by OMB on December 2, 1999. See OMB Nos. 3060–0233, 3060–0774 and 3060–0894. This publication satisfies our statement that the Commission would publish a document announcing the effective date of the rules. It also modifies the rules governing our existing support mechanism to ensure that support for rural carriers is not substantially changed when non-rural carriers are removed from that mechanism and transitioned to the new forward-looking support mechanism.

List of Subjects

47 CFR Part 36

Reporting and recordkeeping requirements, Telephone.

47 CFR Part 54

Universal service.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 99–33767 Filed 12–28–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[WT Docket No. 98–169; FCC 99–372]

Rules to Provide Regulatory Flexibility in the 218–219 MHz Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission modifies the restructuring plan adopted in the 218–219 MHz final rule document. The purpose of the modification is to remove a provision whereby an eligible licensee participating in the restructuring plan can obtain a seventy-percent credit on its down payment and forego, for a period of two years, eligibility to acquire the surrendered licenses. It was not the Commission's intent to adopt the seventy-percent credit and the intended effect is to correct the prior error.

DATES: Effective December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Andrea Kelly, Wireless Telecommunications Bureau, Auctions and Industry Analysis Division (202) 418–0660.

SUPPLEMENTARY INFORMATION: 1. This *Order on Reconsideration* in WT Docket 98–169 was adopted November 24, 1999 and released November 30, 1999. The document is available, in its entirety, for inspection and copying during normal business hours in the FCC Reference Center, (Room CY–A257), 445 12th Street, SW, Washington, DC 20554. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. In addition, it is available on the Commission's website at *http://www.fcc.gov/Bureaus/Wireless/Orders.*

Synopsis

I. Background

2. In the *218–219 MHz Report and Order* 64 FR 59656 (November 3, 1999), the Commission adopted a restructuring plan for existing 218–219 MHz licensees. These licensees were current in installment payments (*i.e.* less than ninety days delinquent) as of March 16, 1998, or those licensees that had properly filed grace period requests

under the former installment payment rule. (''Eligible Licensees''). The restructuring plan offered three options to provide specific relief for licensees that wish to retain their license but are experiencing financial hardship or that wish to return their licenses due to an inability to assume their financial responsibilities. The three options are: (a) Reamortization and Resumption of Payments; (b) Amnesty, and (c) Prepayment, whereby an Eligible Licensee may prepay the principal of any license it wishes to retain with cash and prepayment credits generated from down payments on spectrum returned to the Commission and any installment payments previously made. The Commission's order allowed an Eligible Licensee electing the Amnesty option to choose either to receive no credit for its down payment, but remain eligible to bid on the surrendered licenses when they are subsequently offered in auction, with no restriction on after-market acquisitions; or obtain a credit for seventy percent of its down payment and forego for a period of two years, from the start date of the next auction of the 218–219 MHz Service, eligibility to reacquire the surrendered licenses through either auction or any secondary market transaction.

II. Discussion

3. It was not the Commission's original intent to adopt the seventy percent credit proposed in the *218–219 MHz Flex NPRM*, 63 FR 52215 (September 30, 1998) therefore, on its own motion, for the following reasons, the Commission corrects the prior error. On review, it is apparent that, under the Amnesty option, allowing an Eligible Licensee to obtain credit for its down payment and forego reacquiring surrendered licenses for a period of two years is inconsistent with our responsibility to protect the integrity of the auction program and promote new and innovative uses of spectrum. Giving a seventy percent credit on down payments associated with returned spectrum, without an adequate counterbalancing public interest benefit, would undermine the integrity of the auction process by relieving participants of even the most basic obligation of their participation.

4. However, the Commission recognizes that it allows for a credit on down payments in other portions of the *218–219 MHz Report and Order.* Specifically, an Eligible Licensee who elects the Prepayment option is eligible for an eighty-five percent credit on its down payment. It is important to note that an Eligible Licensee who elects the prepayment option is providing a public benefit through early payment of its financial obligations. Nevertheless, under the Prepayment option, the Commission retains an amount equal to the three-percent default payment. (Fifteen percent of the twenty-percent down payment equals three percent of the purchase price.) Thus, as an Eligible Licensee electing the Amnesty option is not providing the same public benefit, it would not be in the public interest to allow it a seventy-percent credit on its down payment. Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Services, (PCS), *Order on Reconsideration of the Second Report and Order,* 63 FR 17111 (April 8, 1998) (''*C Block Reconsideration Order*'').

5. The *218–219 MHz Report and Order* increased the flexibility of the 218–219 MHz service and extended the license term in order to encourage new and innovative uses in the marketplace and expedite service to the public. In the *218–219 MHz Report and Order,* the only restriction on reacquisition applied to those Eligible Licensees opting for the seventy percent credit. Thus, as the seventy percent credit is no longer available, Eligible Licensees electing Amnesty will not be precluded from reacquiring licenses at auction or in the secondary market. This result is appropriate as Eligible Licensees electing amnesty may still have viable business plans to implement based on spectrum they may acquire in future auctions or in the secondary market. A two-year restriction on the acquisition of certain spectrum may negatively impact an otherwise viable business plan. The Commission's action in this *Order on Reconsideration* moots the comments of EON Corporation seeking to broaden the disqualification period to exclude the future acquisition of any 218–219 MHz Service licenses to be auctioned in the ensuing two-year period. As the Commission stated in the *218–219 MHz Report and Order,* limiting the reacquisition of spectrum or acquisition of additional spectrum by Eligible Licensees would not be in the public interest.

6. The Commission modifies the *218–219 MHz Report and Order.* Therefore, while the Commission will not give Eligible Licensees electing amnesty a credit for down payments associated with spectrum returned to the Commission, neither will it limit the reacquisition of spectrum or the acquisition of additional spectrum.

III. Ordering Clauses

7. Accordingly, it is ordered that, pursuant to § 1.108 of the Commission's rules, 47 CFR 1.108, the Commission reconsiders on its own motion the decision in Amendment of part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, *Report and Order and Memorandum Opinion and Order,* WT Docket No. 98–169, FCC 99–239 regarding amnesty and resumption of payment in the 218–219 MHz service, as detailed herein.

IV. Supplemental Final Regulatory Flexibility Analysis

8. As required by the Regulatory Flexibility Act (''RFA''),[1] an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the Amendment of part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service and Amendment of part 95 of the Commission's Rules to Allow Interactive Video and Data Service Licensees to Provide Mobile Services, *218–219 MHz Flex NPRM.* The Commission sought written public comment on the proposals in the *218–219 MHz Flex NPRM,* including comment on the IRFA. A Final Regulatory Flexibility Analysis (''FRFA'') was included in the Amendment of part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, *218–219 MHz Report and Order.* In this *Order on Reconsideration,* we issue this supplemental Final Regulatory Flexibility Analysis (''supplemental FRFA'') which conforms to the RFA.

V. Need for, and Objecties of, The Order on Reconsideration

9. In the *218–219 MHz Report and Order,* among other things, we adopted a restructuring plan for existing 218–219 MHz licensees that were current in installment payments (*i.e.* less than ninety days delinquent) as of March 16, 1998, or those licensees that had properly filed grace period requests under the former installment payment rule. (''Eligible Licensees''). The restructuring plan offered three options to provide specific relief for licenses that wish to retain their license, but are experiencing financial hardship, or that wish to return their licenses due to an inability to assume their financial responsibilities. Under one of these options, Amnesty, an Eligible Licensee could choose either to receive no credit

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

for its down payment, but remain eligible to bid on the surrendered licenses when they are subsequently offered in auction, with no restriction on after-market acquisitions; or obtain a credit for seventy percent of its down payment and forego for a period of two years, from the start date of the next auction of the 218–219 MHz Service, eligibility to reacquire the surrendered licenses through either auction or any secondary market transaction.

10. On review, it is apparent that, under the Amnesty option, allowing an Eligible Licensee to obtain credit for its down payment and forego reacquiring surrendered licenses for a period of two years is inconsistent with our responsibility to protect the integrity of the auction program and promote new and innovative uses of spectrum. Giving a seventy percent credit of the down payments associated with returned spectrum would undermine the integrity of the auction process by relieving participants of even the most basic obligation of their participation. Further, a two-year restriction on the reacquisition of the surrendered license unduly restricts the number of potential licenses, and is inconsistent with a fair and equitable auction process.

VI. Summary of Significant Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis

11. Previously, no petitions were filed in direct response to the IRFA or the FRFA in this proceeding. Thus, on our own motion, we have issued this *218–219 MHz Reconsideration Order.*

VII. Description and Estimate of the Number of Small Entities to Which the Rules Apply

12. Previously, in the FRFA, pursuant to the RFA, we provided a detailed description and estimate of the number of small entities that may be affected by the proposed rules, if adopted. We noted that the *218–219 MHz Report and Order* affects a number of small entities who are either licensees, or who may choose to become applicants for licenses, in the 218–219 MHz Service. Such entities fall into two categories. The first category consists of those using the 218–219 MHz Service for providing interactivity capabilities in conjunction with broadcast services. In the FRFA, with respect to the first category, we estimated that the number of small business entities operating in the 218–219 MHz band for interactivity capabilities with television viewers in the 218–219 MHz Service which will be subject to the rules will be less than 612. The second category consists of those using the 218–219 MHz Service to operate other types of wireless communications services with a wide variety of uses, such as commercial data applications and two-way telemetry services. In the FRFA, with respect to the second category, we estimated that the number of small entities that would provide wireless communications services other than that described herein would be 247 or less.

13. On January 6, 1998, the SBA approved of the small business size standards established in the *Competitive Bidding Tenth Report and Order.*[2] As we described in the FRFA, the first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (''MSA'') licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business.

VIII. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

14. Previously, in the FRFA to the *218–219 MHz Report and Order,* we adopted rules altering the reporting and recordkeeping requirements for a number of small business entities. The rules changed the obligations of 218–219 MHz Service licensees with respect to license renewal, construction reports, and acquisitions by partitioning or disaggregation. As we noted in the FRFA, the *218–219 MHz Report and Order* contained three options relevant to some small businesses that will alter their reporting and recordkeeping requirements. Our reconsideration order is relevant only to the second option. Specifically, non-defaulting 218–219 MHz Service licensees currently participating in the installment payment plan may elect one of three restructuring plans concerning their outstanding payments. However, our reconsideration order does not alter any reporting, recordkeeping, or other compliance requirements contained in the *218–219 MHz Report and Order.*

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

15. As we described in detail in the FRFA to the *218–219 MHz Report and Order,* we adopted final rules designed to maximize opportunities for participation by, and growth of, small businesses in providing wireless services. We noted that we expected that the extension of license terms from five to ten years and allowing partitioning and disaggregation of licenses will specifically assist small businesses. We also noted that the *218–219 MHz Report and Order* contained provisions, such as liberalization of construction requirements and technical restrictions, and elimination of the cross-ownership restriction, that will assist all licenses, including small business licensees.

16. In this *Order on Reconsideration,* we change the options available to those small businesses electing the Amnesty option in the restructuring plan. The *218–219 MHz Report and Order* allowed an Eligible Licensee electing the Amnesty option to choose either to receive no credit for its down payment, but remain eligible to bid on the surrendered licenses when they are subsequently offered in auction, with no restriction on after-market acquisitions; or obtain a credit for seventy percent of its down payment and forego for a period of two years, from the start date of the next auction of the 218–219 MHz Service, eligibility to reacquire the surrendered licenses through either auction or any secondary market transaction. We recognize that some commentators proposed a more liberal amnesty option. However, we believe that eliminating all adverse financial consequences of a licensee's decision to participate in the auction would be contrary to a fair and equitable auction process. Further, it might encourage future licensees to participate in an auction under the assumption that the Commission will relieve it of the most basic obligations of participation in an auction, if, in the future, its business plans do not prove profitable. Thus, we will not provide the licensees with a seventy percent down payment credit. However, to the extent that a licensee believes that it can create a valuable business with the same license, if its debt burden were smaller, it will not be precluded from acquiring the license at auction, or in any secondary market transaction. For these reasons, we did not consider any significant alternatives to our proposals to minimize significant economic impact on small entities.

17. *Report to Congress:* The Commission will send a copy of the *Order on Reconsideration,* including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Order on Reconsideration,* including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

[2] *See* Letter to Daniel B. Phythyon, Chief, WTB, from Aida Alverez, Administrator, SBA, Dated Jan. 6, 1998.

List of Subjects in 47 CFR Part 95

Communications equipment, Penalties, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 99–33768 Filed 12–28–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Chapter III and Part 301

[Docket No. OST–2000–6698]

Motor Carrier Safety Regulations; Revision of Chapter Heading and Removal of CFR Part

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This document amends the heading for chapter III concerning motor carrier safety regulations. On October 9, 1999, the Secretary of Transportation (Secretary) rescinded the authority previously delegated to the Federal Highway Administrator to perform motor carrier functions and operations, and to carry out the duties and powers related to motor carrier safety vested in the Secretary by chapters 5 and 315 of title 49, United States Code; and redelegated that authority to the Director, Office of Motor Carrier Safety, a new office within the Department of Transportation (Department). The title of chapter III, therefore, was changed from ''Federal Highway Administration, Department of Transportation'' to ''Office of Motor Carrier Safety, Department of Transportation'' on October 29, 1999. On December 9, 1999, the Motor Carrier Safety Improvement Act of 1999 established a new administration—the Federal Motor Carrier Safety Administration (FMCSA)—within the Department to improve the motor carrier safety program, effective January 1, 2000. Accordingly, the title of chapter III is now being changed from ''Office of Motor Carrier Safety, Department of Transportation'' to ''Federal Motor Carrier Safety Administration, Department of Transportation'' to reflect the statutory changes noted above. The document also removes regulations that reference the organizational structure of the Federal Highway Administration (FHWA) so that new regulations may be added for the FMCSA.

EFFECTIVE DATE: This final rule is effective on January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590; or Ms. Cindy Walters, Office of the General Counsel, (202) 366–9314, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

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

Background

Section 338 of the Department of Transportation Appropriations Act, FY2000 [Public Law 106–69, 113 Stat. 986, at 1022 (October 9, 1999)] prohibits the expenditure of any funds appropriated by that Act ''to carry out the functions and operations of the Office of Motor Carriers within the Federal Highway Administration'' (FHWA). Section 338 further provides that, if the authority of the Secretary on which the functions and operations of the Office of Motor Carriers are based is redelegated outside the FHWA, the funds available to that office under the Act may be transferred and expended to support its functions and operations.

On October 9, 1999, the Secretary rescinded the authority previously delegated to the FHWA Administrator to carry out motor carrier functions and operations, and to carry out the duties and powers related to motor carrier safety vested in the Secretary by chapters 5 and 315 of title 49, U.S.C.; and redelegated that authority to the Director, Office of Motor Carrier Safety, a new office within the Department (64 FR 56270 and 64 FR 58356). Thus, the heading for chapter III, title 49 of the CFR, was changed from ''Chapter III—Federal Highway Administration, Department of Transportation'' to ''Chapter III—Office of Motor Carrier Safety, Department of Transportation'' on October 29, 1999 (64 FR 58355).

Section 101, title I, of the Motor Carrier Safety Improvement Act of 1999 (Public Law 106–159, 113 Stat. 1748 (December 9, 1999)) established a new administration—the Federal Motor Carrier Safety Administration—to improve the motor carrier safety program, effective January 1, 2000. Accordingly, the heading for chapter III, title 49 of the CFR, is now changed to read ''Chapter III—Federal Motor Carrier Safety Administration, Department of Transportation.''

The new FMCSA includes the following headquarters offices: the Office of Motor Carrier Research and Standards, the Office of Data Analysis and Information Systems, the Office of Motor Carrier Enforcement, the Office of Policy and Program Management, the Office of National and International Safety Programs, the Office of Technology Evaluation and Deployment, and the Office of Program Evaluation. In addition, the motor carrier functions of the former OMCS's Resource Centers and Division (i.e., State) Offices have been transferred to FMCSA Resource Centers and FMCSA Division Offices, respectively. Rulemaking, enforcement, and other activities of the former OMCS will be continued by the new administration. The action will cause no changes in the motor carrier functions and operations of the offices or resource centers listed above. For the time being all phone numbers and addresses are unchanged. Accordingly, this rule will also remove part 301 of chapter III (which references the organizational structure of the FHWA) and reserve this part so that new regulations may be added for the FMCSA.

This rule is being published as a final rule and made effective on January 1, 2000. As the rule relates to Departmental organization, procedure, and practice, notice and comment on it are unnecessary under 5 U.S.C. 553(b). This action makes no substantive changes to the motor carrier safety regulations. It simply provides a chapter heading change to 49 CFR chapter III, and removes certain regulations that reference the organizational structure of the FHWA. Therefore, prior notice and opportunity to comment are unnecessary and that good cause exists to dispense with the 30-day delay in the effective date requirement so that the Federal Motor Carrier Safety Administration may administer its regulations pursuant to the statutory changes noted above.

List of Subjects in 49 CFR Part 301

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing and under the authority of 49 U.S.C. 301 and 322, Public Law 106–159, 113 Stat. 1748, and 49 CFR 1.73, chapter III of title 49, Code of Federal Regulations, is amended as follows:

1. The heading for chapter III is revised to read as follows:

CHAPTER III—FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 301—[REMOVED AND RESERVED]

2. Remove and reserve part 301.

Issued on: December 22, 1999

Rosalind A. Knapp,

Acting General Counsel, Office of the Secretary of Transportation.

[FR Doc. 99–33808 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF82

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Two Chinook Salmon Evolutionarily Significant Units (ESUs) in California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) are adding the Central Valley spring-run Evolutionarily Significant Unit (ESU) and the California Coastal ESU of the west coast chinook salmon (*Oncorhynchus tshawytscha*) to the List of Endangered and Threatened Wildlife as threatened. This amendment to the list, authorized by the Endangered Species Act of 1973 (Act), is based on a determination by the National Marine Fisheries Service (NMFS), which has jurisdiction for this species.

EFFECTIVE DATE: November 15, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy Gloman, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, (703/358–2171).

SUPPLEMENTARY INFORMATION: In accordance with Reorganization Plan No. 4 of 1970, the NMFS, National Oceanic and Atmospheric Administration, Department of Commerce, is responsible for the decisions regarding the Central Valley spring-run and the California Coastal, both are ESUs of the west coast chinook salmon as defined in the Act. Under section 4(a)(2) of the Act, NMFS must decide whether a species under its jurisdiction should be classified as endangered or threatened, and the Service is responsible for the actual addition of these species to the List of Endangered and Threatened Wildlife in 50 CFR 17.11(h).

The NMFS published its determination of threatened status for the Central Valley spring-run ESU and the California Coastal ESU of the west coast chinook salmon on September 16, 1999 (64 FR 50394). Accordingly, we are now adding both ESUs to the List of Endangered and Threatened Wildlife, as threatened species. This addition is effective as of November 15, 1999, as indicated in the NMFS determination. Because this action is nondiscretionary, and in view of the public comment period provided by NMFS on the March 9, 1998, proposed listing (63 FR 11482), we find that good cause exists to omit the notice and public comment procedures of 5 U.S.C. 553(b).

National Environmental Policy Act

We have determined that an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Export, Import, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter 1, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following to the List of Endangered and Threatened Wildlife, in alphabetical order under FISHES:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special Rules
Common name	Scientific name						
*	*	*	*	*	*	*	
Fishes							
*	*	*	*	*	*	*	
Salmon, chinook ...	*Oncorhynchus* (=*Salmo*) *tshawytscha*.	North Pacific Basin from U.S.A. (CA) to Japan.	U.S.A. (CA) all naturally spawned spring-run populations from the Sacramento San Joaquin R. mainstem and its tributaries..	T	674	NA	NA
Salmon, chinook ...	*Oncorhynchus tshawytscha*.	North Pacific Basin from U.S.A. (CA) to Japan.	U.S.A. (CA) from Redwood Creek south to Russian R., inclusive, all naturally spawn populations in mainstems and tributaries.	T	674	NA	NA
*	*	*	*	*	*	*	

Dated: December 9, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99–33782 Filed 12–28–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No.991207319–9319–01; I.D. 120899A]

Pacific Tuna Fisheries; Closure of U.S. Purse Seine Fishery for Yellowfin Tuna in the Eastern Pacific Ocean

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

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces that the 1999 yellowfin tuna quota has been reached and the 1999 U.S. purse seine fishery for yellowfin tuna in the Commission Yellowfin Regulatory Area (CYRA) of the Inter-American Tropical Tuna Commission (IATTC) is closed. In accordance with a resolution adopted by the IATTC and approved by the Department of State, several restrictions on fishing for yellowfin tuna in the eastern Pacific Ocean (EPO) are now in effect.

DATES: Effective at 12:01 a.m. on November 24, 1999.

ADDRESSES: Submit comments to Rodney R. McInnis, Acting Regional Administrator, Southwest Region (Regional Administrator), NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Svein Fougner at 562–980–4040.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of the regulations at 50 CFR part 300, subpart C, which implement the Tuna Conventions Act (16 U.S.C. § 955). The United States is a member of the IATTC, which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission signed in 1949. The IATTC was established to provide an international arrangement to ensure the effective international conservation and management of tunas and tuna-like fishes in the convention area. The IATTC has maintained a scientific research and fishery monitoring program for many years, and annually assesses the status of stocks of tuna and the fisheries to determine appropriate harvest limits or other measures to prevent overexploitation of the stocks and promote viable fisheries. The Convention Area is all waters of the EPO between 40° N. lat. and 40° S. lat. out to 150° W. long. The boundary of the CYRA was described in the announcement of the 1999 harvest quotas that was published in the **Federal Register** on December 14, 1999 (64 FR 69672).

At its annual meeting in June 1999, the IATTC adopted a resolution (which was subsequently agreed to by the Department of State) recommending that action be taken by member nations and other fishing nations to limit the catch of yellowfin tuna in 1999 to 225,000 metric tons (mt), with the potential to increase the quota to up to 270,000 mt if the Director of IATTC concluded that, based on catch and effort data, that level of harvest would not adversely affect the yellowfin tuna stock. Subsequently, the IATTC met in October 1999 and agreed to measures that would set the final quota at 265,000 mt.

Under regulations promulgated earlier this year (64 FR 44428, August 16, 1999), the Regional Administrator is authorized to notify the U.S. tuna industry (industry) directly of any quotas and associated regulatory measures that have been recommended by the IATTC and approved by the Department of State. In a separate action, the Regional Administrator announced the 1999 yellowfin tuna quota directly to the industry. The Regional Administrator also announced the 1999 yellowfin tuna quota to the industry and the public in the **Federal Register** on December 14. In another separate action, the Regional Administrator advised the industry directly of the management measures contained in this **Federal Register** document.

The IATTC Director advised the Regional Administrator on November 16, 1999, that the 1999 quota was projected to be reached on November 23, 1999. Accordingly, the measures agreed to in the October 1999 resolution were implemented. Those measures are as follows:

1. Purse seine vessels with an observer aboard from the On-Board Observer Program established under the Agreement on the International Dolphin Conservation Program must refrain from fishing for yellowfin in the CYRA.

2. The landings of fish caught while fishing for other species of tunas in the CYRA after the date established for the CYRA closure by any individual purse seiner with an observer aboard may include a maximum of 15–percent yellowfin (relative to its total catch of all species of fish during those periods).

3. Vessels with an observer aboard which are at sea on December 31, 1999, will not be subject to the 15–percent maximum after that date during the remainder of that trip.

4. Purse seine vessels and baitboats without an observer aboard which are at sea on the closure date may continue to fish for yellowfin without restriction until they return to port for unloading.

5. Purse seine vessels and baitboats without an observer aboard which are not at sea on the closure date, but which depart from port to fish for tunas after November 23, 1999, must refrain from fishing for yellowfin. The landings by vessels in this category, regardless of the date the trip is completed, may include a maximum of 15 percent yellowfin caught while fishing for other species of tunas.

For the reasons stated here and in accordance with the regulations at 64 FR 44428, August 16, 1999, NMFS herein announces that, after midnight on November 23, 1999, no U.S. vessel may fish unless in compliance with the above measures.

Classification This action is authorized by the regulations implementing the Tuna Conventions Act. The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Acting Regional Administrator (see **ADDRESSES**) during business hours. This action is taken under the authority of 50 CFR part 300, subpart C and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 951–961 and 971 *et seq.*

Dated: December 22, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–33852 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 991207319–9319–01; I.D. 113099A]

Pacific Tuna Fisheries; Closure of Purse Seine Fishery for Bigeye Tuna

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

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces closure of the 1999 purse seine fishery for bigeye tuna in the eastern Pacific Ocean through a prohibition of purse seine sets on floating objects in the eastern Pacific Ocean after midnight on November 8, 1999.

DATES: Effective at 12:01 A.M. on November 9, 1999.

ADDRESSES: Submit comments to Rodney R. McInnis, Acting Regional Administrator, Southwest Region (Regional Administrator), NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Mr. Svein Fougner at 562–980–4040.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of the regulations at 50 CFR part 300, subpart C, which implement the Tuna Conventions Act (16 U.S.C. § 955). The U.S. is a member of the Inter-American Tropical Tuna Commission (IATTC), which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission signed in 1949. The IATTC was established to provide an international arrangement to ensure the effective international conservation and management of tunas and tuna-like fishes in the Convention Area. The IATTC has maintained a scientific research and fishery monitoring program for many years, and annually assesses the status of stocks of tuna and the fisheries to determine appropriate harvest limits or other measures to prevent overexploitation of the stocks and promote viable fisheries. The Convention Area is all waters of the eastern Pacific Ocean (EPO) between 40° N. lat. and 40° S. lat. out to 150° W. long.

At its annual meeting in June 1999, the IATTC adopted a resolution, which was subsequently agreed to by the Department of State, recommending that action be taken by member nations and other fishing nations to limit the 1999 bigeye tuna catch by the purse seine fishery in the Convention Area to 40,000 mt. The harvest limit was to be implemented by prohibiting purse seine sets on all types of floating objects in the Convention Area when this harvest level is reached. The limit is intended to protect the spawning stock and maintain bigeye stock productivity. Sets on floating objects result in relatively high catch rates of juvenile bigeye, and available information suggests that the stock cannot sustain purse seine catches in excess of 40,000 mt per year. The closure of the purse seine fishery will limit the mortality of small bigeye.

The IATTC Director reviewed available data on effort and catch of bigeye in the purse seine fisheries throughout the year, and in October projected that the limit of 40,000 mt would be reached on November 8, 1999. Accordingly, member nations of the IATTC were to prohibit further sets on floating objects after that date.

Under regulations promulgated earlier this year (64 FR 44428, August 16, 1999), the Regional Administrator is authorized to notify the U.S. tuna industry directly of any quotas and associated regulatory measures that have been recommended by the IATTC and approved by the Department of State. In a separate action, the industry has been advised accordingly. However, a **Federal Register** notification also must be published as soon as practicable.

For the reasons stated here and in accordance with the regulations at 64 FR 44428, August 16, 1999, NMFS herein announces: After midnight on November 8, 1999, no U.S. vessel may make a purse seine set around floating objects in the Convention Area.

Classification

This action is authorized by the regulations implementing the Tuna Conventions Act. The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Regional Administrator (see **ADDRESSES**) during business hours. This action is taken under the authority of 50 CFR part 300, subpart C and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 951–961 and 971 *et seq.*

Dated: December 22, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–33854 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 64, No. 249

Wednesday, December 29, 1999

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–311–AD]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 35, 35A, 36, 36A, 55, 55B, and 55C Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM); rescission.

SUMMARY: This document proposes to rescind an existing airworthiness directive (AD), applicable to certain Learjet Model 35, 35A, 36, 36A, 55, 55B, and 55C airplanes. That AD currently requires installation of a placard on the instrument panel in the cockpit to advise the flightcrew that the Omega navigation system may be inoperative at certain engine speeds. That AD also provides for an optional installation of certain band reject filters, which eliminates the need for the placard. The actions specified by that AD are intended to prevent excessive deviation from the intended flight path due to loss of navigation signals, which could result in a potentially low-fuel condition or a traffic conflict. Since the issuance of that AD, use of the Omega navigation system has been permanently discontinued; therefore, the original unsafe condition no longer exists.

DATES: Comments must be received by February 14, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–311–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

Information pertaining to this proposed rule may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: C. Dale Bleakney, Aerospace Engineer, Flight Test Branch, ACE–117W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4135; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ‘‘Comments to Docket Number 99–NM–311–AD.’’ The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–311–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On September 5, 1995, the FAA issued AD 95–19–04, amendment 39–9365 (60 FR 47265, September 12, 1995), applicable to certain Learjet Model 35, 35A, 36, 36A, 55, 55B, and 55C airplanes. That AD requires installation of a placard on the instrument panel in the cockpit to advise the flightcrew that the Omega navigation system may be inoperative at certain engine speeds. That AD also provides for an optional installation of certain band reject filters, which eliminates the need for the placard. That action was prompted by reports of loss of certain navigation signals during extended over-water operation. The requirements of that AD are intended to prevent excessive deviation from the intended flight path due to loss of navigation signals, which could result in a potentially low-fuel condition or a traffic conflict.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has received notification that use of the Omega navigation system has been permanently discontinued. Therefore, the FAA finds that the original unsafe condition (harmonic interference from the generator, which interferes with Omega navigation signals and could result in loss of navigation signals and, potentially, a low-fuel condition or a traffic conflict) no longer exists.

FAA’s Conclusions

Since the unsafe condition no longer exists, the FAA has determined that it is necessary to rescind AD 95–19–04 in order to prevent operators from installing an unnecessary placard or unnecessary band reject filters. (Installation of certain band reject filters is provided in AD 95–19–04 as an optional alternative method of compliance with that AD.)

This proposed action would rescind AD 95–19–04. Rescission of AD 95–19–04 would constitute only such action, and, if followed by a final action, would not preclude the agency from issuing another notice in the future, nor would it commit the agency to any course of action in the future.

Cost Impact

The FAA estimates that 177 airplanes of U.S. registry are affected by AD 95–19–04. The actions that are currently required by that AD take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. The cost of required parts (local manufacture of a placard) is negligible. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $10,620, or $60 per airplane. However, the adoption of this proposed rescission would eliminate those costs.

Should an operator elect to remove the placard required by AD 95–19–04, it would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of removal of the placard would be approximately $60 per airplane.

Should an operator elect to remove the band reject filters that were one option for compliance with AD 95–19–04, it would take approximately 15 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of removing the band reject filters would be approximately $900 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9365.

Learjet: Docket 99–NM–311–AD. Rescinds AD 95–19–04, Amendment 39–9365.

Applicability: Model 35, 35A, 36, 36A, 55, 55B, and 55C airplanes; equipped with Global Wulfsburg GNS 500, GNS–1000, and GNS–X Flight Management Systems; certificated in any category.

Issued in Renton, Washington, on December 22, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33734 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–305–AD]

RIN 2120–AA64

Airworthiness Directives; EMBRAER Model EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain EMBRAER Model EMB–145 series airplanes, that currently requires revisions to the Airplane Flight Manual (AFM) to provide the flight crew with updated procedures for prohibiting use of the autopilot below 1,500 feet above ground level, emergency procedures for pitch trim runaway, and abnormal procedures for autopilot trim failure and stabilizer out of trim. That AD also requires installation of certain warning placards. This action would require replacement of a certain integrated computer with a new integrated computer; installation of an upgraded integrated computers checklist; and removal of certain placards and certain limitations in the AFM. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the pitch trim system, which could cause undetected autopilot trim runaway, and consequent reduced controllability of the airplane, uncommanded autopilot disconnect, and excessive altitude loss.

DATES: Comments must be received by January 28, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–305–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Rob Capezzuto, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6071; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–305–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–305–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 21, 1999, the FAA issued AD 99–01–12, amendment 39–11015 (64 FR 4521, January 29, 1999), applicable to certain EMBRAER Model EMB–145 series airplanes, to require revisions to the Airplane Flight Manual to provide the flight crew with updated procedures for prohibiting use of the autopilot below 1,500 feet above ground level, emergency procedures for pitch trim runaway, and abnormal procedures for autopilot trim failure and stabilizer out of trim. That AD also requires installation of certain warning placards. That action was prompted by a report indicating that, during a flight test of a similar airplane model, the pitch trim monitoring subsystem malfunctioned internally. The requirements of that AD are intended to prevent failure of the pitch trim system, which could cause undetected autopilot trim runaway, and consequent reduced controllability of the airplane, uncommanded autopilot disconnect, and excessive altitude loss.

Actions Since Issuance of Previous Rule

In the preamble to AD 99–01–12, the FAA indicated that the actions required by that AD were considered ''interim action'' and that further rulemaking action was being considered. The FAA now has determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 145–31–0010, dated March 18, 1999. The service bulletin describes procedures for replacement of the integrated computer IC–600 #1, part number (P/N) 7017000–82402, with a new integrated computer, P/N 7017000–82422; installation of an upgraded integrated computers checklist; and removal of warning placards, P/N 145–39641–001, on the left and right sides of the cockpit glare shield panel. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The Departmento de Aviacao Civil (DAC), which is the regulatory authority for Brazil, approved this service bulletin and issued Brazilian airworthiness directive 98–12–01R1, dated May 26, 1999, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 99–01–12 to continue to require revisions to the AFM to provide the flight crew with updated procedures for prohibiting use of the autopilot below 1,500 feet above ground level, emergency procedures for pitch trim runaway, and abnormal procedures for autopilot trim failure and stabilizer out of trim. The proposed AD also would continue to require installation of certain warning placards. The proposed AD also would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Foreign AD

The proposed AD would differ from the parallel Brazilian airworthiness directive in that it would mandate replacement of the integrated computer IC–600 #1, P/N 7017000–82402, with a new integrated computer, P/N 7017000–82422. The Brazilian airworthiness directive provides for that action as an alternative to installation of certain warning placards.

Mandating the terminating action is based on the FAA's determination that, in this case, long-term continued operational safety would be better assured by a modification to remove the source of the problem, rather than by revising flight procedures. The source of the unsafe condition (failure of the pitch trim monitoring system) is in the design of the pitch trim monitoring system installed on the airplane, in that the pitch trim monitoring system failed to detect a trim malfunction. In this particular case, there is no way to physically prevent the use of the autopilot below 1,500 ft. above ground level (AGL), unlike in other situations in which the inadvertent positioning of a switch or lever can be remedied by application of a limiter or guard to prevent or restrict operation of that switch or lever.

While revising flight procedures ensures that the flight crew is informed that an unsafe condition may exist if the autopilot is selected below 1,500 ft. AGL, it does not remove the source of that unsafe condition. Human factors (e.g., variations in flight crew training and familiarity with the airplane, flight crew awareness in the presence of other hazards, flight crew fatigue) may allow inadvertent selection of the autopilot below 1,500 ft. AGL and result in the unsafe condition. Thus, revisions to flight procedures are not considered adequate to provide the degree of safety assurance necessary for the transport airplane fleet. Consideration of these factors has led the FAA to mandate replacement of the integrated computer IC–600 #1, P/N 7017000–82402, with a new integrated computer, P/N 7017000–82422; and installation of an integrated computers checklist, if applicable, in order to eliminate the unsafe condition associated with a failure of the pitch trim monitoring system.

Operators should also note that, although PART II of Brazilian AD 98–12–01R1 requires installation of an upgraded integrated computers checklist, the FAA has determined that this is only necessary if a checklist is currently installed on the airplane.

Explanation of Change to Applicability Statement

Operators should note that the applicability of the proposed AD differs from the applicability of AD 99–01–12 in that it no longer affects airplanes equipped with IC–600 #1 having P/N 7017000–83402. The DAC has informed the FAA that affected airplanes equipped with this IC–600 #1 part number are not subject to the identified unsafe condition. Brazilian AD 98–12–01R1 also reflects this change.

Cost Impact

There are approximately 46 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 99–01–12, and retained in this proposed AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $2,760, or $60 per airplane.

The new integrated computer replacement, checklist installation and placard removals that are proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $675 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $33,810, or $735 per airplane.

The removal of AFM limitations that is proposed in this AD action would take approximately 1 work hour per airplane to accomplish. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $2,760, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11015 (64 FR 4521, January 29, 1999), and by adding a new airworthiness directive (AD), to read as follows:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 99–NM–305–AD. Supersedes AD 99–01–12, Amendment 39–11015.

Applicability: Model EMB–145 series airplanes, serial numbers 145004 through 145047 inclusive and 145049 through 145051 inclusive; certificated in any category; equipped with IC–600 #1 having part number (P/N) 7017000–82402; excluding those airplanes on which the modification specified in any of the following Embraer service bulletins has been accomplished:

- Embraer Service Bulletin 145–22–0001, dated May 7, 1998;
- Embraer Service Bulletin 145–22–0004, Revision 01, dated July 30, 1998;
- Embraer Service Bulletin 145–31–0007, Revision 02, dated June 30, 1998.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the pitch trim system, which could cause undetected autopilot trim runaway, and result in reduced controllability of the airplane, uncommanded autopilot disconnect, and excessive altitude loss; accomplish the following:

Restatement of Requirements of AD 99–01–12

Placard Installation and AFM Revision

(a) Within 20 flight hours after February 2, 1999 (the effective date of AD 99–01–12, amendment 39–11015), accomplish paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD.

(1) Install warning placards, P/N 145–39641–001, on the left and right sides of the cockpit glare shield panel, using double-face tape (or similar), in accordance with Embraer Service Bulletin, 145–31–A010, dated December 15, 1998, which states:

''DO NOT OPERATE AUTOPILOT BELOW 1,500 FT A.G.L.''

(2) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) (in the ''AUTOPILOT'' section) to include the information contained in this paragraph of the AD. This may be accomplished by inserting a copy of this AD in the AFM.

''AUTOPILOT

THE USE OF AUTOPILOT BELOW 1,500 FEET IS PROHIBITED.''

(3) Revise the Emergency Procedures Section of the FAA-approved AFM (in the ''PITCH TRIM RUNAWAY'' section) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

''PITCH TRIM RUNAWAY

Immediately and simultaneously:

Control Column	HOLD FIRMLY
Quick Disconnect Button.	PRESS AND HOLD
Pitch Trim Main System.	OFF
Pitch Trim Back Up System.	OFF
Quick Disconnect Button.	RELEASE

If control column forces are excessive, try to recover airplane control by turning one system on and trimming the airplane as necessary. Initiate with the backup system. Leave the failed system off.

If neither system is operative:

PITCH TRIM INOPERATIVE Procedure.	COMPLETE
Autopilot	OFF

Do not use the autopilot for the remainder of the flight.''

(4) Revise the Abnormal Procedures Section of the FAA-approved AFM (in the ''AUTOPILOT'' section) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

''AUTOPILOT TRIM FAILED

PITCH TRIM RUNAWAY Procedure.	PERFORM
STABILIZER OUT OF TRIM	
PITCH TRIM RUNAWAY Procedure.	PERFORM''

New Requirements of this AD

Terminating Action

(b) Within 500 flight hours after the effective date of this AD, accomplish paragraphs (b)(1) and (b)(2) of this AD. Accomplishment of paragraph (b) of this AD constitutes terminating action for the requirements of paragraph (a) of this AD.

(1) Replace the integrated computer IC–600 #1, P/N 7017000–82402, with a new integrated computer, P/N 7017000–82422; install an upgraded integrated computers checklist; and remove warning placards, P/N 145–39641–001, on the left and right sides of the cockpit glare shield panel required by paragraph (a)(1) of this AD; in accordance with EMBRAER Service Bulletin S.B. 145–31–0010, dated March 18, 1999.

Note 2: Installation of an upgraded integrated computers checklist is required only if an integrated computers checklist is currently installed on the airplane.

(2) Remove the limitations required by paragraphs (a)(2), (a)(3), and (a)(4) of this AD from the AFM.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

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

Note 4: The subject of this AD is addressed in Brazilian airworthiness directive 98–12–01R1, dated May 26, 1999.

Issued in Renton, Washington, on December 22, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33733 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–313–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767–200 and –300 series airplanes. This proposal would require repetitive inspections to detect wear or damage of the door latches and disconnect housings of the off-wing escape slide compartments. If wear or damage is found, the proposed AD would require replacement of these discrepant components with new components. This proposal is prompted by reports of worn and damaged door latches and disconnect housings of the off-wing escape slide compartments. The actions specified by the proposed AD are intended to ensure deployment of an escape slide during an emergency evacuation. Non-deployment of an escape slide during an emergency could slow down the evacuation of the airplane and result in injury to passengers or flightcrew.

DATES: Comments must be received by February 14, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–313–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Jim Cashdollar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2785; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–313–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–313–AD , 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of broken and worn door latches and disconnect housings of the off-wing escape slide compartments on Boeing Model 767–200 and –300 series airplanes. These worn or broken parts have caused non-deployment of a slide during an emergency evacuation and during a test. This condition, if not corrected, could result in non-deployment of an escape slide during an emergency evacuation. Non-deployment of an escape slide during an emergency could slow down the evacuation of the airplane and result in injury to passengers or flightcrew.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–25A0260, dated July 9, 1998, which describes procedures for repetitive detailed visual inspections to detect wear or damage of the door latches and disconnect housings of the off-wing escape slide compartments. The alert service bulletin also describes procedures for replacement of these components with new components if wear or damage is found. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Alert Service Bulletin

Operators should note that the alert service bulletin recommends accomplishing the initial inspection within 180 days (after the release of the service bulletin) for airplanes with 6,000 flight hours or more; and within 6,000 flight hours or 180 days after release of the service bulletin, whichever is later, for airplanes with less than 6,000 flight hours. However, the FAA has determined that a compliance time of 6,000 total flight hours, or 18 months after the effective date of this AD, whichever occurs later, would address the identified unsafe condition in a timely manner. By aligning the initial inspections with an 18-month interval, they can be incorporated into the maintenance schedules recommended by the Boeing Maintenance Manual.

In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection (less than three hours). In light of all of these factors, the FAA finds a compliance time of 6,000 total flight hours, or 18 months after the effective date of this AD, whichever occurs later, for initiating the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Additionally, operators should note that the alert service bulletin allows door latches having part numbers H2052–11 and H2052–115 to remain installed provided that they are not worn or damaged. However, the FAA has previously issued AD 92–16–17, amendment 39–8327 (57 FR 47987, October 21, 1992), and AD 95–08–11, amendment 39–9200 (60 FR 20013, April 24, 1995). Those AD's require, among other things, modification of escape slide compartment door latching mechanisms in accordance with Boeing Alert Service Bulletin 767–25A0174, dated August 15, 1991. Part of the modification entails replacement of latches having part numbers H2052–11 or H2052–115 with new latches having part number H2052–13. Therefore, a NOTE has been included in the body of this proposed AD to clarify that latches having part number H2052–11 or H2052–115 are not acceptable. The FAA finds that this proposed rule does not need to include a requirement to replace latches having part numbers H2052–11 or H2052–115, because such replacement is already required by AD 92–16–17 and AD 95–08–11.

Cost Impact

There are approximately 634 airplanes of the affected design in the worldwide fleet. The FAA estimates that 241 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $43,380, or $180 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 98–NM–313–AD.

Applicability: Model 767–200 and –300 series airplanes, as listed in Boeing Alert Service Bulletin 767–25A0260, dated July 9, 1998; certificated in any category; except Model 767 series airplanes that have undergone conversion to freighter configurations, and on which the off-wing escape system has been removed or deactivated.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent non-deployment of an escape slide during an emergency evacuation, which could slow down the evacuation of the airplane and result in injury to passengers or flightcrew, accomplish the following:

Inspections

(a) Prior to the accumulation of 6,000 total flight hours, or within 18 months after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect wear or damage of the door latches and disconnect housings of the off-wing escape slide compartments, in accordance with Boeing Alert Service Bulletin 767–25A0260, dated July 9, 1998. Repeat the inspection thereafter at intervals not to exceed 6,000 flight hours or 18 months, whichever occurs later.

Note 2: Boeing Alert Service Bulletin 767–25A0260, dated July 9, 1998, allows repetitive inspections of a door latch having part number H2052–11 or H2052–115, provided that the latch is not worn or damaged. However, replacement of any latch having part number H2052–11 or H2052–115 with a new latch having part number H2052–13 is described as part of a modification of the escape slide compartment door latching mechanism that is specified in Boeing Alert Service Bulletin 767–25A0174, dated August 15, 1991. Accomplishment of that modification is required by AD 92–16–17, amendment 39–8327, and AD 95–08–11, amendment 39–9200. Therefore, operators should note that any latch having part number H2052–11 or H2052–115 found during an inspection required by paragraph (a) of this AD is already required to be replaced in accordance with AD 92–16–17 or AD 95–08–11, as applicable.

Note 3: Inspections and corrective actions accomplished prior to the effective date of this AD, in accordance with the Validation Copy of Boeing Alert Service Bulletin 767–25A0260, dated April 28, 1998, are considered acceptable for compliance with the applicable action specified in this AD.

Replacement

(b) If any part is found to be worn or damaged during the inspections performed in accordance with paragraph (a) of this AD, prior to further flight, replace the worn or damaged part with a new part, and perform an adjustment of the off-wing escape slide system, in accordance with Boeing Alert Service Bulletin 767–25A0260, dated July 9, 1998.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Issued in Renton, Washington, on December 22, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33732 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWP–26]

Proposed Establishment of Class E Airspace; Big Bear City, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class E airspace area at Big Bear City, CA. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 26 at Big Bear City Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the GPS RWY 26 SIAP to Big Bear City Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Big Bear City Airport, Big Bear City, CA.

DATES: Comments must be received on or before, February 4, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 99–AWP–26, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, CA 90261.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, CA 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Air Traffic Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, CA 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ‘‘Comments to Airspace Docket No. 99–AWP–26.’’ The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, CA 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, CA 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by establishing a Class E airspace area at

Big Bear City, CA. The establishment of a GPS RWY 26 SIAP at Big Bear City Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the GPS approach procedure at Big Bear City Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS RWY 26 SIAP at Big Bear City Airport, Big Bear City, CA. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

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

* * * * *

AWP CA E5 Big Bear City, CA [New]

Big Bear City Airport, CA
(Lat. 34°15′49″ N, long. 116°51′16″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Big Bear City Airport.

* * * * *

Issued in Los Angeles, California, on December 20, 1999.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–33789 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–29]

Proposed Establishment of Class E Airspace; Atmore, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Atmore, AL. A Global Positioning System (GPS) Runway (RWY) 36 Standard Instrument Approach Procedure (SIAP) has been developed for Atmore Municipal Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument flight rules (IFR) operations at Atmore Municipal Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

DATES: Comments must be received on or before January 28, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 99–ASO–29, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, GA 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–ASO–29.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, GA 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, GA 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Atmore, AL. A GPS RWY 36 SIAP has been developed for Atmore Municipal Airport. As a result, controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Atmore Municipal Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with the publication of the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

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

* * * * *

ASO AL E5 Atmore, AL [New]

Atmore Municipal Airport, AL
(Lat. 31°00′58″N, long. 87°26′48″W)

That airspace extending upward from 700 feet above the surface within a 6.5–mile radius of Atmore Municipal Airport.

* * * * *

Issued in College Park, GA, on December 15, 1999.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–33792 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

RIN 0596–AB36

Land Uses; Special Uses; Recovery of Costs for Processing Special Use Applications and Monitoring Compliance With Special Use Authorizations; Extension of Comment Period

AGENCY: Forest Service, USDA.

ACTION: Proposed rule; extension of the comment period.

SUMMARY: On November 24, 1999, the Department of Agriculture, Forest Service, published proposed regulations for recovering costs associated with processing applications for special use authorizations to use and occupy National Forest System lands and monitoring compliance with these special use authorizations (64 FR 66342). The provisions of this proposed rule would apply to applications and authorizations for use of National Forest System lands. The agency is extending the comment period by 30 days to February 24, 2000, to respond to requests form organizations and individuals who have requested more time to review and comment on the document.

DATES: Comments must be received in writing by February 24, 2000.

ADDRESSES: Send written comments to Director, Lands Staff, 2720, 4th Floor-South, Sidney R. Yates Federal Building, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090. Submit electronic comments (as an ASCII file if possible) to: gtlands4/wo@fs.fed.us.

Please confine written comments to issues pertinent to the proposed rule and explain the reasons for any recommended changes. Where possible, reference the specific section or paragraph you are addressing. The Forest Service may not include in the administrative record for the proposed rule those comments it receives after the comment period closes (see **DATES**) or comments delivered to an address other than those listed in **ADDRESSES.**

You may view an electronic version of this proposed rule at the Forest Service Internet home page at: http://www.fs.fed.us/recreation/permits/.

All comments, including the names, street addresses, and other contact information about respondents, are placed in the record and are available for public review and copying at the above address during regular business hours (8:30 a.m. to 4:30 p.m.), Monday through Friday, except holidays. Those wishing to inspect comments are encouraged to call ahead, (202) 205–1256, to facilitate access to the building.

FOR FURTHER INFORMATION CONTACT: Randy Karstaedt, Lands Staff, (202) 205–1256 or Alice Carlton, Recreation, Heritage, and Wilderness Resources Staff, (202) 205–1399.

Dated: December 22, 1999.

Phil Janik,

Chief Operating Officer.

[FR Doc. 99–33826 Filed 12–28–99; 8:45 am]

BILLING CODE 3410–11–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–26–1–6965b; FRL–6514–7]

Approval and Promulgation of Implementation Plan for Louisiana: Transportation Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a revision to the Louisiana State Implementation Plan (SIP) that contains transportation conformity rules. If EPA approves this transportation conformity SIP revision, the State will be able to implement and enforce the Federal transportation conformity requirements at the State level. This proposed action would streamline the conformity process and

allow direct consultation among agencies at the local levels. The proposed approval is limited to Transportation Conformity. The EPA approved the SIP revision for conformity of general Federal actions on September 13, 1996 (61 FR 48409).

The EPA is proposing to approve this SIP revision under sections 110(k) and 176 of the Clean Air Act. The EPA has given its rationale for the proposed approval and other information in the Final Rules section of this **Federal Register**.

In the ''Rules and Regulations'' section of **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comment. The EPA has explained its reasons for this approval in the preamble to the direct final rule. If EPA receives no adverse comment, no further action will be taken on this proposed rule. If EPA receives adverse comment, the direct final rule will be withdrawn and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: We must receive your comments in writing, postmarked by January 28, 2000.

ADDRESSES: You should send your written comments to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PDL) at the address given below. You may inspect copies of the State's SIP revision and other relevant information during normal business hours at the following locations. If you wish to examine these documents, you should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, TX 75202; Telephone: (214) 665–7214.

Louisiana Department of Environmental Quality, Air Quality, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810; Telephone: (225) 765–0178.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P.E., Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, TX 75202; Telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION: If you wish to obtain additional information, you should read the Direct Final rule which is located in the Rules section of this **Federal Register**.

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

Dated: November 22, 1999.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 99–33449 Filed 12–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK–21–1709–b; FRL–6515–4]

Approval and Promulgation of State Implementation Plans: Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of Alaska which include revisions to Alaska's Air Quality Control Regulations, Transportation Conformity Rule (18 AAC 50); Emissions Inspection and Maintenance (I/M) requirements for Motor Vehicles (18 AAC 52); and Fuel Requirements for Motor Vehicles (18 AAC 53).

These revisions include changing the I/M program schedule for cars subject to I/M from annual to biennial, replacing the CO contingency measures for Anchorage, and streamlining several portions of the Alaska Air Quality Control Plan for more efficient reading and organization. They also include updating and streamlining the Alaska's Transportation Conformity Rule. In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received in writing by January 28, 2000.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the state submittal are available at the following addresses for inspection during normal business hours. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101

The Alaska Department of Environmental Conservation, 410 Willoughby Avenue, Suite 105, Juneau, AK 99801–1795.

FOR FURTHER INFORMATION CONTACT: Ms. Montel Livingston, Office of Air Quality, (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–0180.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: December 10, 1999.

Chuck Clarke,

Regional Administrator,

Region 10.

[FR Doc. 99–33526 Filed 12–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PARTS 160, 792, and 806

RIN 2020–AA26

[ECDIC–1998–02; FRL–5782–7]

Consolidation of Good Laboratory Practice Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to consolidate its Good Laboratory Practice Standards (GLPS), which currently exist in two separate regulations at 40 CFR part 160 and 40 CFR part 792. The proposed consolidated GLPS rule would be applicable to programs under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Toxic Substances Control Act (TSCA) to which the current rules apply. In addition to the proposed consolidation, EPA is also proposing amendments to the GLPS that streamline and ease

compliance while still maintaining the rule's data integrity assurance purpose. The consolidation will reduce the volume of regulations administered by EPA without adversely affecting current data integrity requirements. GLPS are intended to ensure the integrity of data gathered from studies in a wide variety of disciplines such as toxicology, ecological effects, chemical fate, residue chemistry, and product performance testing. Under FIFRA, compliance with regulations on GLPS applies to all studies required to be submitted in support of pesticide registrations, reregistrations, and experimental use permits. Under TSCA, GLPS are required for testing conducted pursuant to consent agreements/orders and test rules issued under sections 4 and 5 of that Act. Failure to comply with applicable GLPS is an actionable violation which may result in civil or criminal penalties, and can render data from non-compliant studies unacceptable for consideration by EPA.

DATES: Comments, identified by the docket control number EC-1998-02, must be received by March 29, 2000.

ADDRESSES: By mail, submit comments to: Enforcement and Compliance Docket and Information Center (2201A), Office of Enforcement and Compliance Assurance, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Enforcement and Compliance Docket and Information Center, Office of Enforcement and Compliance Assurance, Rm. 4033, Ariel Rios Bldg., 1200 Pennsylvania Ave., Washington, DC. The telephone number for the Enforcement and Compliance Docket and Information Center is (202) 564–2614.

Information submitted and any comment(s) concerning this proposed rule may be claimed confidential by marking any or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed rule and any written comments received will be available for public inspection in Room 4033 at the Ariel Rios Bldg. address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to Donna Williams@epamail.epa.gov. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number EC-1998-02. No CBI should be submitted through e-mail. Electronic comments on this proposed rule, but not the record, may be viewed or new comments filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: David Stangel, Agriculture and Ecosystems Division, Office of Compliance (2225A), U. S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 564–4162, e-mail: stangel.david@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA proposes to amend the FIFRA GLPS (40 CFR part 160) and the TSCA GLPS (40 CFR part 792) to consolidate these regulations into one rule. In addition, EPA proposes to provide clarifications of certain requirements and amend other requirements of the rule to reflect the experience gained in administering the GLPS.

A. Legal Authority

These GLPS are promulgated under the authority of sections 3, 4, 5, 6, 8, 18, 24(c), and 25(a) of FIFRA, 7 U.S.C. 136 *et seq.*, as amended, sections 408, 409[1], and 701 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, the Reorganization Plan No. 3 of 1970, and sections 4(b)(1) and 5 of TSCA, 15 U.S.C. 2603 *et seq.*

B. Background

EPA published FIFRA and TSCA GLPS in the **Federal Register** on November 29, 1983 (48 FR 53946 and 48 FR 53922), which were codified as 40 CFR parts 160 and 792 respectively, and were amended on August 17, 1989 (54 FR 34052 and 54 FR 34034). These TSCA and FIFRA regulations were initially promulgated to address assuring the validity of data in the wake of investigations by EPA and the Food and Drug Administration (FDA) during the mid-1970's which revealed that some studies submitted to the Agencies had not been conducted in accordance with acceptable laboratory practices. Some studies had been conducted so poorly that the resulting data could not be relied upon in EPA's regulatory decision-making process. In some cases, results were selectively reported, underreported, or fraudulently reported. In addition, it was discovered that some testing facilities displayed poor animal care procedures and inadequate recordkeeping techniques. The GLPS specify minimum practices and procedures in order to ensure the quality and integrity of data submitted to EPA in support of a research or marketing permit for a pesticide product, or the quality and integrity of data submitted in accordance with a TSCA section 4 or 5 requirement.

When EPA published its initial FIFRA and TSCA GLPS in the **Federal Register** of November 29, 1983, EPA sought to harmonize the requirements and language with those regulations promulgated by the FDA in the **Federal Register** of December 22, 1978 (43 FR 60013), and codified as 21 CFR part 58. Differences between the two Agencies' current GLPS regulations existed only to the extent necessary to reflect the Agencies' different statutory responsibilities under TSCA, FIFRA, and FFDCA. Similar to the FDA GLPS regulations, the FIFRA and TSCA GLPS delineate standards for studies required to be submitted to EPA for its regulatory decision-making.

Compliance with EPA's FIFRA and TSCA GLPS has been monitored through a program of laboratory inspections and data audits coordinated between EPA and FDA. Under an Interagency Agreement originated in 1978 between FDA and EPA, FDA carries out GLPS inspections at laboratories which conduct health effects testing. EPA primarily performs GLPS inspections for environmental laboratories and conducts data audits for health effects and environmental studies. Because of the cooperative nature of FDA's and EPA's GLPS programs, it is important that the GLPS remain substantially consistent not only between programs within each Agency but also between Agencies.

FDA revised its GLPS regulations on September 4, 1987 (52 FR 33768), to simplify the regulations and reduce the regulatory burden on testing facilities without compromising study integrity. EPA published amendments to its FIFRA and TSCA GLPS in the **Federal Register** of August 17, 1989 (54 FR 34052 and 54 FR 34043 respectively). During that rulemaking, EPA expanded the applicability of its FIFRA GLPS to cover all data required to be submitted under FIFRA.

On March 4, 1995, the President directed all Federal agencies to conduct

[1] Prior to August 3, 1996 (the effective date of the Food Quality Protection Act of 1996), data were submitted to the Agency pursuant to section 409. References in this rule to section 409 remain with respect to such data.

a comprehensive review of the regulations these agencies administer and reduce or eliminate unnecessary or duplicative regulations. In response, EPA conducted a review of its regulations to determine candidates for such reductions. During this process, EPA identified the FIFRA and TSCA GLPS as providing an opportunity for such reductions. The goal of consistency of GLPS resulted in the same regulatory language being duplicated throughout these two rules. This proposed rulemaking reflects EPA's belief that it is not necessary to duplicate the same language in two separate regulations.

Since the 1989 rulemaking, EPA has received many requests for clarifications with respect to compliance requirements, especially regarding FIFRA studies that came under GLPS coverage in 1989. EPA's responses to those requests facilitated compliance with the FIFRA GLPS rule and have been made available to the regulated community in a Question and Answer document which may be obtained from the address listed above in the ''FOR FURTHER INFORMATION CONTACT'' section.

EPA has been in communication with representatives of the regulated community who indicated that it would improve the quality of and compliance with the GLPS if previous clarifications were incorporated. As a result of these initial consultations, EPA believes that it makes sense to incorporate these clarifications and consider other suggestions for improving these regulations, and is proposing several modifications to the GLPS requirements as part of this rulemaking.

II. Summary of Proposed Changes

A. Consolidation

Currently, EPA has GLPS at 40 CFR part 160 and part 792. These rules are identical in general format, each consisting of the following subparts: A--General Provisions; B--Organization and Personnel; C--Facilities; D--Equipment; E--Testing Facilities Operation; F--Test, Control, and Reference Substances; G--Protocol for and Conduct of a Study; H and I--[Reserved]; and J--Records and Reports.

Most of the sections under these subparts are identical between the two rules. In such cases, EPA proposes to continue the current language except where amended as provided in Unit II.B. of this preamble. Some sections include rule differences for the two regulatory areas--TSCA and FIFRA. In such cases, it is necessary to provide separate, distinct sections, or subsections applicable to those programs.

Therefore, the proposed 40 CFR part 806 will continue the common language currently found in both 40 CFR parts 160 and 792. Current differences between the TSCA and FIFRA rules will be treated in one of two ways: (1) Differences which are programmatic and necessary will be continued in the form of separate regulatory provisions under the consolidated GLPS; and (2) differences that are determined to be inadvertent, e.g., typographic errors, minor grammatical differences, etc., will be eliminated.

1. *Program differences*. The two subparts in which there are significant differences between the two rules are Subpart A (General Provisions) and Subpart J (Records and Reports). All other subparts are virtually identical.

a. *Subpart A--General Provisions*—i. *§ 806.1--Scope*. Section 806.1(a) proposes to include the relevant statutory authorities under FIFRA and FFDCA (currently applicable to pesticides studies), and the authorities under TSCA (currently applicable to substances regulated under TSCA). In § 806.1(a)(2), the Agency states that the GLPS apply to any study which any person conducts, initiates, or supports by a certain date. If a study is initiated prior to that date but conducted after that date, the GLPS would apply to the study. Only if the study is completed prior to the effective date of the rule would it not be subject to the amended GLPS.

ii. *§ 806.3--Definitions*. Section 806.3 includes definitions which are specific to program areas and are currently listed separately in the two rules.

iii. *§ 806.12--Statement of Compliance or Noncompliance*. Section 806.12 proposes specific and separate applicability under the current program areas (toxics and pesticides) which provide for compliance statements.

b. *Subpart J--Records and Reports*. --§ 806.195--Retention of Records. Section 806.195 proposes separate record retention requirements for documentation records, raw data, and specimens pertaining to FIFRA and TSCA studies.

B. Clarifying Amendments

In addition to consolidating the regulations, the Agency is proposing to amend the current regulatory language in 40 CFR parts 160 and 792 to clarify certain requirements and simplify others. These amendments are being proposed in response to feedback received from the regulated community as well as comments received in response to publication of the Agency's intent to consolidate the FIFRA and TSCA GLPS.

1. *Subpart A--General Provisions*. The proposal would amend the current definitions of the terms ''carrier'' and ''test systems'' by adding the word ''air'' to each definition to clarify that air is considered both a carrier and a test system in certain circumstances. This change will alleviate confusion on this point.

EPA proposes to amend the current definition of the term ''quality assurance unit'' by deleting the phrase ''the study director'' and adding the phrase ''individual(s) directly involved in the conduct of the study, including the study director.'' This change is being proposed because it is equally improper for persons other than the study director who are working directly on the study to perform quality assurance of the study.

EPA proposes to amend the current definition of the term ''vehicle'' by adding examples of substances which are considered vehicles.

EPA proposes to amend the current §§ 160.10 and 792.10 by adding the phrase ''prior to initiation of the study,'' to the end of the sentence as well as requiring the notification to be made in writing. This change clarifies a number of questions that have been raised in the past and is in keeping with normal practices. Section 806.10 reflects the change.

EPA proposes to amend the current §§ 160.17(a)(2) and 792.17(a)(2) by changing the reference to FFDCA section 406, which was a typographical error, to section 408, the proper reference. EPA proposes to amend the term ''consent agreement'' to ''consent agreement/order'' and the reference to ''section 4 of TSCA'' to ''section 4 or 5 of TSCA'' throughout the proposed rule to reflect that GLPS are required in both test rules and consent agreements/orders, and that testing can be required under both sections 4 and 5 of TSCA. Section 806.17(a)(2) reflects these changes.

EPA proposes to amend the current §§ 160.33(f) and 792.33(f) to read: ''. . .during or at the close or termination of the study.'', to address those instances where a study is terminated prior to completion of the study. Section 806.33(f) reflects the change.

2. *Subpart B--Organization and Personnel*. EPA proposes to amend the current §§ 160.35(b)(1) and 792.35(b)(1) to include the following language ''. . .indexed to permit expedient retrieval, which identifies the. . .'' to allow the study director to employ an indexing system which may not reference the test substance but would still allow the

facility to quickly extract the information. Section 806.35(b)(1) reflects this change. EPA proposes to amend the current §§ 160.35(b)(2) and 792.35(b)(2) to read: ''. . .all protocols until study completion pertaining. . . .'' Protocols are required to be archived at the completion of a study and requiring the maintenance of another copy of the protocol would be duplicative. Section 806.35(b)(2) reflects this change.

3. *Subpart C--Facilities*. Questions have been raised in the past about the applicability of the language in the current §§ 160.43(a) and 792.43(a); specifically whether co-exposure of test species to the test substance (e.g., inhalation studies) is allowable given the requirement for proper separation of species or test systems. Co-exposure of test species in inhalation studies is allowable unless the study protocol specifically prohibits the practice. Section 806.43(a) reflects this change.

4. *Subpart D--Equipment*. The Agency proposes to amend the current §§ 160.63 and 792.63 by adding paragraph (d) to address the integrity of data stored and manipulated by computers, data processors, and automated laboratory procedures to make it clear that these types of equipment are subject to the same provisions as other laboratory equipment. Section 806.63 reflects this change.

5. *Subpart E--Testing Facilities Operation*. The Agency is proposing to amend the current §§ 160.83 and 792.83 to allow the testing facility to develop a documentation performance standard as an alternative to an expiration date for the contents of transfer bottles and wash bottles. The testing facility has the option of labeling transfer and wash bottles or developing another well documented system to ensure that these solutions have not deteriorated or exceeded their expiration date. Section 806.63 reflects this change. EPA specifically requests comment on a documentation performance standard that would provide the same assurances that the solutions have not deteriorated or exceeded their expiration date. Other alternatives being considered include the development of a list of substances that do not require expiration dates, e.g., distilled water.

6. *Subpart F--Test, Control, and Reference Substances*. The Agency proposes to amend the current §§ 160.105(b) and 792.105(b) to allow concurrent determination of solubility as well as stability of the test, control, or reference substance. The rule presently allows only concurrent determination of the stability of the test, control, or reference substance. Section 806.105(b) reflects this change.

EPA proposes to amend the current §§ 160.105(c) and 792.105(c) to allow the study director the options of discarding containers which contained the test substance, with proper recordkeeping of the disposition of the containers, or retaining the containers until the termination of the study. The proposal to relax the requirement for retention of test substance containers is being made to address the burden of retaining containers in field studies where large amounts of the test substance are used. The approach proposed is prescriptive in nature and gives the testing facility and study director EPA's position on what the Agency considers adequate documentation. EPA is requesting comments on whether such a prescriptive approach is necessary or should be relaxed to state that the study director may authorize container disposal and simply note in the raw data that this has been done.

In addition, the Agency is proposing to amend the current §§ 160.105(c) and 792.105(c) by deleting the term ''where appropriate'' from the first sentence to now read ''. . .expiration date, if any, and storage conditions necessary to maintain the identity, . . .'' because information on storage conditions is always appropriate. Section 806.105(c) reflects these changes.

The Agency proposes to amend the current §§ 160.113(a)(2) and 792.113(a)(2) by the addition of the following language ''. . .reference substance in the mixture; or if the solubility of the substance is difficult to determine, appropriate homogeneity data, by the testing facility. . .'' to address those situations in which the test, control, or reference substance is insoluble and may create emulsions that are very difficult to analyze. Section 806.113(a)(2) reflects this change. EPA proposes to amend the current §§ 160.113(b) and 792.113(b) to exempt tank mixes and solutions prepared for immediate administration (within 12 hours) in mammalian acute toxicology studies, metabolism studies, or mutagenicity studies from requirements for concentration determinations (but not from uniformity determinations) under §§ 160.113(a)(1) and 792.113(a)(1) and solubility determinations under §§ 160.113(a)(2) and 792.113(a)(2). This addition is being proposed in response to comments that these mixes must be made and used quickly, and it is not possible to perform solubility testing before the experimental start date. Section 806.113(b) reflects this change.

7. *Subpart G--Protocol for and Conduct of a Study*. EPA proposes to amend the current §§ 160.120(a)(2) and 792.120(a)(2) to exempt metabolism studies from the requirement to identify the test, control, or reference substance when their identities are to be determined during the study. In metabolism studies, the identity of the metabolite or metabolites may not be known at the time that the protocol is written. EPA proposes that the protocol need not identify reference substances for metabolites when they cannot be identified before the beginning of the study. This proposal does not affect the requirement to identify metabolism study test, reference, or control substances at the beginning of the study, unless the purpose of the study is to identify them. Section 806.120(a)(2) reflects this change.

EPA proposes to amend the current §§ 160.120(c) and 792.120(c) to allow discontinued studies or studies otherwise terminated before completion to be finalized by writing a protocol amendment with the reasons for the termination, in lieu of preparing a final report. All documentation for the terminated study must be retained in accordance with § 806.195. Sponsors are still obligated to meet section 6(a)(2) of FIFRA and section 8(e) of TSCA requirements for submission of adverse effects data including, but not limited to, those generated by terminated studies. Section 806.120(c) reflects this change.

8. *Subpart J--Records and Reports*. EPA proposes to amend the current §§ 160.185(a)(1) and 792.185(a)(1) by deleting the words ''terminated or discontinued,'' because § 806.120(c) was added to address terminated or discontinued studies. Section 806.185(a)(1) reflects this change.

EPA proposes to amend the current §§ 160.185(a)(7) and 792.185(a)(7) by deleting the phrase ''or other test organisms,'' because the required information is relevant chiefly to animal systems. Section 806.185(a)(7) reflects this change.

Finally, EPA proposes to amend the current § 792.195 by replacing the existing record retention requirements for studies submitted under sections 4 and 5 of TSCA with a single requirement to retain records for a period of 5 years following the date on which the final report of the study is submitted to the Agency. The change will simplify record retention requirements for persons required to retain records by providing a single standard for record retention. Section 806.195 reflects this change.

III. Public Docket

A record has been established for this rulemaking under docket number EC-

1998-02. This record is available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 4033, Office of Enforcement and Compliance Assurance, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., Washington, DC. Written requests should be mailed to: Enforcement and Compliance Docket and Information Center (2201A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

IV. Statutory Review

In accordance with FIFRA section 25(a), this proposal was submitted to the FIFRA Scientific Advisory Panel, the Secretary of Agriculture, and appropriate Congressional Committees. No comments were received.

V. Regulatory Assessment Requirements

A. Executive Order 12866

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this proposed action is not a ‘‘significant regulatory action’’ and is therefore not subject to the Office of Management and Budget (OMB) review. The Agency believes that the amendments associated with this action constitute regulatory relief, and therefore will not impose any additional costs or burdens. The analysis related to the costs and burdens of the original requirements were discussed in conjunction with their promulgation in 1989. Because this action consolidates the requirements contained in the original GLPS, no new costs or burdens are imposed. Instead, the Agency believes that the consolidation of the GLPS may actually increase efficiencies for those companies that are required to use both TSCA and FIFRA GLPS, because these companies will now only have one version of GLPS to use. Additionally, many of the changes in the rule allow the laboratories to use more efficient means of achieving the requirements of the GLPS. The Agency solicits comments on the impacts of this consolidation on the regulated community.

B. Executive Order 12898

Pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), entitled *Federal Actions to Address - Environmental Justice in Minority Populations and Low-Income Populations*, 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 this action will not adversely impact low-income and minority communities. These regulations consolidate existing regulations and have not been the subject of any environmental justice concerns in the past.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA’s prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ‘‘to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.’’

Today’s proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. The proposed rule does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this document.

D. Unfunded Mandates Reform Act and Executive Order 12875

This proposed action does not contain any new requirements or impose any additional burden because it proposes to consolidate requirements together which currently exist in two separate rulemakings. As such, this proposed action is expected to result in savings and burden relief rather than in an expenditure by any State, local, or Tribal governments, or by anyone in the private sector, and will not result in any unfunded Federal mandates as defined by Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

In addition, since this action does not contain any Federal mandates on States, localities, or Tribes, it is not subject to the requirements of Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993).

E. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this regulatory action does not have any significant adverse economic impacts on a substantial number of small entities. This proposed rule does not impose any new requirements that would impose any adverse impacts on small entities. In consolidating the existing requirements, EPA is allowing those companies that are currently conducting various testing for use either pursuant to FIFRA or TSCA, to adhere to and follow a single GLP standard. Given the efficiencies provided, the Agency has determined that this proposal will not result in adverse impacts. As such, no impact analysis is required.

Information related to this determination has been included in the docket for this rulemaking, and, in accordance with Small Business Administration (SBA) policy, will be provided to the Chief Counsel for Advocacy of the SBA upon request. Any comments regarding the economic impacts that this regulatory action may impose on small entities should be submitted to the Agency at the address listed under Unit III. of this preamble.

F. Paperwork Reduction Act

This proposed action does not contain any new information collection requirements. The GLPS do not directly impose any information collection requirements, but they describe standards regarding testing conducted for other information collections currently approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*:

Maximum Residue Limit (MRL) Petitions on Food/Feed Crops and New Inert Ingredients (EPA ICR No. 597.06, OMB Control No. 2070–0024)

Notice of Pesticide Registration by States to Meet a Special Local Need (SLN) under FIFRA Section 24(c) (EPA ICR No. 595.06, OMB Control No. 2070–0055)

Application for New or Amended Registration (EPA ICR No. 277.10, OMB Control No. 2070–0060)

Application for Experimental Use Permit (EUP) to Ship a Pesticide for Experimental Purposes Only (EPA ICR

No. 276.08, OMB Control No. 2070–0040)

Data Call-In for Special Review Chemicals (EPA ICR No. 922.05, OMB Control No. 2070–0057)

Application and Summary Report for an Emergency Exemption for Pesticides (EPA ICR No. 596.05, OMB Control No. 2070–0032)

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

G. Request for Comment on Potential Voluntary Consensus Standards to Consider for Future Regulatory Actions

This proposal does not involve a regulatory action that would require the Agency to consider voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Section 12(d) directs EPA to use voluntary consensus standards in its regulatory 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 standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards when the NTTAA directs the Agency to do so.

As indicated earlier, these guidelines represent an Agency effort to harmonize the test guidelines between the Office of Pesticide Programs (OPP) and the Office of Pollution Prevention and Toxics (OPPT), as well as harmonizing the OPP and OPPT test guidelines with those of the Organization for Economic Cooperation and Development. The process for developing and amending these test guidelines includes the extensive involvement of the scientific community, including peer review by the FIFRA SAP and other expert scientific panels, and providing extensive public comment.

In the future, these test guidelines could be incorporated into regulatory actions taken by EPA pursuant to TSCA section 4. Although the NTTAA requirements do not specifically apply to the issuance of these particular test guidelines today, EPA invites your comment on whether or not there are any voluntary consensus standards that should be considered during the development of any future action under TSCA. Future actions under TSCA section 4 would go through notice and comment rulemaking or be negotiated as voluntary testing enforcement agreements/consent orders/decrees, allowing for additional public comment on this issue. Nevertheless, the Agency is interested in whether or not there are any voluntary consensus standards that EPA should considered in lieu of these test guidelines when the Agency develops any future regulatory action that incorporates these test guidelines. Any comments provided will assist the Agency in complying with the NTTAA by facilitating the Agency's identification of voluntary consensus standards that should be considered during the development of a proposed regulatory action that incorporates any standards included in these test guidelines. Please submit your comments to the person identified in the FOR FURTHER INFORMATION CONTACT section.

H. 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: (1) is determined to be ‘‘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 a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

I. Executive Order 13132

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132 (64 FR 43255, August 10, 1999), which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 (52 FR 41685, October 30, 1987), on federalism still applies. This proposed rule will not have a substantial direct effect on 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, as specified in Executive Order 12612.

List of Subjects

40 CFR Part 160

Environmental protection, Laboratories, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 792

Environmental protection, Hazardous substances, Laboratories, Reporting and recordkeeping requirements.

40 CFR Part 806

Environmental protection, Data requirements, Good laboratory practice, Hazardous materials, Pesticides and pests, Reporting and recordkeeping requirements, Testing.

Dated: October 28, 1999.

Carol M. Browner,

Administrator.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 160 [Removed]

1. By removing part 160.

PART 792 [Removed]

2. By removing part 792.

3. By adding subchapter S consisting of part 806 to read as follows:

SUBCHAPTER S—STANDARDS, TEST METHODS, AND GUIDELINES

PART 806—GOOD LABORATORY PRACTICE STANDARDS

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806.195 Retention of records.

Authority: 7 U.S.C. 136a, 136c, 136d, 136f, 136j, 136t, 136v, 136w; 15 U.S.C. 2603; 21 U.S.C. 346a, 348, 371, Reorganization Plan No. 3 of 1970.

Subpart A—General Provisions

§ 806.1 Scope.

(a)(1) This part prescribes good laboratory practices for conducting studies that support or are intended to support applications for research or marketing permits for pesticide products regulated by the EPA. This part is intended to assure the quality and integrity of data submitted pursuant to sections 3, 4, 5, 8, 18, and 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136a, 136c, 136f, 136q, and 136v(c)) and sections 408 and 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended (21 U.S.C. 346a, 348).

(2) This part applies to any study described by paragraph (a)(1) of this section which any person conducts, initiates, or supports on or after [Insert date 60 days after date of publication in the **Federal Register** of the final rule].

(b)(1) This part also prescribes good laboratory practices for conducting studies relating to health effects, environmental effects, and chemical fate testing pursuant to the Toxic Substances Control Act (TSCA) (Public Law 94–469, 90 Stat. 2006, 15 U.S.C. 2603 *et seq.*). This part is intended to assure the quality and integrity of data submitted pursuant to test rules and testing consent agreements/orders issued under section 4 and section 5 of TSCA.

(2) This part applies to any study described by paragraph (b)(1) of this section which any person conducts, initiates, or supports on or after [Insert date 60 days after date of publication in the **Federal Register** of the final rule].

(3) It is EPA's policy that all data developed for submission under section 5 of TSCA be in accordance with provisions of this part. If data are not developed in accordance with the provisions of this part, EPA will consider such data insufficient to evaluate the health and environmental effects of the chemical substances unless the submitter provides additional information demonstrating that the data are reliable and adequate.

§ 806.3 Definitions.

As used in this part, the following terms shall have the meanings specified:

Application for research or marketing permit includes:

(1) An application for registration, amended registration, or reregistration of a pesticide product under FIFRA sections 3, 4, or 24(c).

(2) An application for an experimental use permit under FIFRA section 5.

(3) An application for an exemption under FIFRA section 18.

(4) A petition or other request for establishment or modification of a tolerance, for an exemption for the need for a tolerance, or for other clearance under FFDCA section 408.

(5) A petition or other request for establishment or modification of a food additive regulation or other clearance by EPA under FFDCA section 409.

(6) A submission of data in response to a notice issued by EPA under FIFRA section 3(c)(2)(B).

(7) Any other application, petition, or submission sent to EPA intended to persuade EPA to grant, modify, or leave unmodified a registration or other approval required as a condition of sale or distribution of a pesticide.

Batch means a specific quantity or lot of a test, control, or reference substance that has been characterized according to § 806.105(a).

Carrier means any material, including but not limited to feed, water, soil, air, or nutrient media, with which the test substance is combined for administration to a test system.

Control substance means any chemical substance or mixture, or any other material other than a test substance, feed, or water, that is administered to the test system in the course of a study for the purpose of establishing a basis for comparison with the test substance for known chemical or biological measurements.

EPA means the U.S. Environmental Protection Agency.

Experimental start date means the first date the test substance is applied to the test system.

Experimental termination date means the last date on which data are collected directly from the study.

FDA means the U.S. Food and Drug Administration.

FFDCA means the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 321 *et seq*).

FIFRA means the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 136 *et seq*).

Person includes an individual, partnership, corporation, association, scientific or academic establishment, government agency, or organizational unit thereof, and any other legal entity.

Quality assurance unit means any person or organizational element (except individual(s) directly involved in the conduct of the study, including the study director), designated by testing facility management to perform the duties relating to quality assurance of the studies.

Raw data means any laboratory worksheets, records, memoranda, notes, or exact copies thereof, that are the result of original observations and activities of a study and are necessary for the reconstruction and evaluation of the report of that study. In the event that exact transcripts of raw data have been prepared (e.g., tapes which have been transcribed verbatim, dated, and verified accurate by signature), the exact copy or exact transcript may be substituted for the original source as raw data. Raw data may include photographs, microfilm or microfiche copies, computer printouts, any original data captured electronically or by some other medium, dictated observations, and recorded data from automated instruments.

Reference substance means any chemical substance or mixture, or analytical standard, or material other than a test substance, feed, or water, that is administered to or used in analyzing the test system in the course of a study for the purposes of establishing a basis for comparison with the test substance for known chemical or biological measurements.

Specimens means any material or sample derived from a test system for examination or analysis.

Sponsor means:

(1) A person who initiates and supports, by provision of financial or other resources, a study;

(2) A person who submits a study to the EPA: in support of an application for a research or marketing permit; or in response to a TSCA section 4 test rule and/or a person who submits a study under a TSCA section 4 testing consent agreement/order or a TSCA section 5 consent order to the extent the agreement, rule or order references this part; or

(3) A testing facility, if it both initiates and actually conducts the study.

Study means any experiment at one or more test sites, in which a test substance is studied in a test system under laboratory conditions or in the environment to determine or help predict its effects, metabolism, product performance (pesticide efficacy studies only as required by 40 CFR 158.640) environmental and chemical fate, persistence, or residue, or other characteristics in humans, other living organisms, or media. The term ''study'' does not include basic exploratory studies carried out to determine whether a test substance or a test method has any potential utility.

Study completion date means the date the final report is signed by the study director.

Study director means the individual responsible for the overall conduct of a study.

Study initiation date means the date the protocol is signed by the study director.

Test substance means a substance or mixture administered or added to a test system in a study, which substance or mixture:

(1) Is the subject of an application for a research or marketing permit supported by the study, or is the contemplated subject of such an application; or

(2) Is an ingredient, impurity, degradation product, metabolite, or radioactive isotope of a substance described by paragraph (1) of this definition, or some other substance related to a substance described by that paragraph, which is used in the study to assist in characterizing the toxicity, metabolism, or other characteristics of a substance described by that paragraph; or

(3) Is used to develop data to meet the requirements of a TSCA section 4 test rule and/or is developed under a TSCA section 4 testing consent agreement/order or TSCA section 5 consent order to the extent the agreement, rule, or order references this part.

Test system means any animal, plant, microorganism, chemical or physical matrix, including but not limited to soil, water or air, or subparts thereof, to which the test, control, or reference substance is administered or added for study. ''Test system'' also includes appropriate groups or components of the system not treated with the test, control, or reference substance.

Testing facility means a person who actually conducts a study, i.e., actually uses the test substance in a test system. Testing facility encompasses only those operational units that are being or have been used to conduct studies.

TSCA means the Toxic Substances Control Act (15 U.S.C., 2601 *et seq.*)

Vehicle means any agent which facilitates the mixture, dispersion, or solubilization of a test substance with a carrier (e.g., water, mineral oil, animal feed).

§ 806.10 Applicability to studies performed under grant and contracts.

When a sponsor or other person utilizes the services of a consulting laboratory, contractor, or grantee to perform all or a part of a study to which this part applies, that sponsor or person shall notify the consulting laboratory, contractor, or grantee, in writing, that the service is, or is part of, a study that must be conducted in compliance with the provisions of this part, prior to initiation of the study.

§ 806.12 Statement of compliance or non-compliance.

Any person who submits to EPA either an application for a research or marketing permit and who, in connection with the application, submits data from a study to which this part applies, or a test required by a test rule or testing consent agreement/order issued under section 4 or 5 of TSCA, shall include in the application or submission a true and correct statement, signed by the applicant, the sponsor, and the study director, of one of the following types:

(a) A statement that the study was conducted in accordance with this part.

(b) A statement describing in detail all differences between the practices used in the study and those required by this part.

(c) A statement that the person was not a sponsor of the study, did not conduct the study, and does not know whether the study was conducted in accordance with this part.

§ 806.15 Inspection of a testing facility.

(a) Testing facility management shall permit an authorized employee or duly designated representative of EPA or FDA, at reasonable times and in a reasonable manner, to inspect the facility and to inspect (and in the case of records also to copy) all records and specimens required to be maintained regarding studies to which this part applies. The records inspection and copying requirements shall not apply to quality assurance unit records of findings and problems, or to actions recommended and taken, except that EPA may seek production of these records in litigation or formal adjudicatory hearings.

(b) EPA will not consider reliable for purposes of supporting an application for a research or marketing permit, or showing that a chemical substance or mixture does not present a risk of injury to health or the environment, any data developed by a testing facility or sponsor that refuses to permit inspection in accordance with this part. The determination that a study will not be considered in support of an application for a research or marketing permit or reliable for other purposes does not, however, relieve the applicant for such a permit or the sponsor of a required test of any obligation under any applicable statute or regulation to submit the results of the study to EPA.

(c) Because a testing facility is a place where chemicals are stored or held, it is subject to inspection under section 11 of TSCA.

§ 806.17 Effects of non-compliance.

(a)(1) EPA may refuse to consider reliable for purposes of supporting an application for a research or marketing permit any data from a study which was not conducted in accordance with this part.

(2) Submission of a statement required by § 806.12 which is false may form the basis for cancellation, suspension, or modification of the

research or marketing permit, or denial or disapproval of an application for such a permit, under FIFRA section 3, 4, 5, 6, 18, or 24 or FFDCA section 408 or 409, or for criminal prosecution under 18 U.S.C. 2 or 1001 or FIFRA section 14, or for imposition of civil penalties under FIFRA section 14.

(b)(1) The sponsor or any other person who is conducting or has conducted a test to fulfill the requirements of a test rule or testing consent agreement/order issued under section 4 or 5 of TSCA will be in violation of section 15 of TSCA if:

(i) The test is not being or was not conducted in accordance with any requirement of this part;

(ii) Data or information submitted to EPA under this part include information or data that are false or misleading, contain significant omissions, or otherwise do not fulfill the requirements of this part; or

(iii) Entry in accordance with § 806.15 for the purpose of auditing test data or inspecting test facilities is denied. Persons who violate the provisions of this part may be subject to civil or criminal penalties under section 16 of TSCA, legal action in United States District Court under section 17 of TSCA, or criminal prosecution under 18 U.S.C. 2 or 1001.

(2) EPA, at its discretion, may not consider reliable for purposes of showing that a chemical substance or mixture does not present a risk of injury to health or the environment any study which was not conducted in accordance with this part. EPA, at its discretion, may rely upon such studies for purposes of showing adverse effects. The determination that a study will not be considered reliable does not, however, relieve the sponsor of a required test of the obligation under any applicable statute or regulation to submit the results of the study to EPA.

(3) If data submitted to fulfill a requirement of a test rule or testing consent agreement/order issued under section 4 or 5 of TSCA are not developed in accordance with this part, EPA may determine that the sponsor has not fulfilled its obligations under section 4 or 5 of TSCA and may require the sponsor to develop data in accordance with the requirements of this part in order to satisfy such obligations.

Subpart B—Organization and Personnel

§ 806.29 Personnel.

(a) Each individual engaged in the conduct of or responsible for the supervision of a study shall have the appropriate education, training, and experience, or a combination thereof, to enable that individual to perform the assigned functions.

(b) Each testing facility shall maintain a current summary of training and experience and job description for each individual engaged in or supervising the conduct of a study.

(c) There shall be a sufficient number of personnel for the timely and proper conduct of the study according to the protocol.

(d) Personnel shall take necessary personal sanitation and health precautions designed to avoid contamination of test systems and test, control, and reference substances.

(e) Personnel engaged in a study shall wear clothing appropriate for the duties they perform. Such clothing shall be changed as often as necessary to prevent microbiological, radiological, or chemical contamination of test systems and test, control, and reference substances.

(f) Any individual found at any time to have an illness that may adversely affect the quality and integrity of the study shall be excluded from direct contact with test systems, test, control, and reference substances, and any other operation or function that may adversely affect the study until the health or medical condition is corrected. All personnel shall be instructed to report to their immediate supervisors any health or medical conditions that may reasonably be considered to have an adverse effect on a study.

§ 806.31 Testing facility management.

For each study, testing facility management shall:

(a) Designate a study director as described in § 806.33 before the study is initiated.

(b) Replace the study director promptly if it becomes necessary to do so during the conduct of a study.

(c) Assure that there is a quality assurance unit as described in § 806.35.

(d) Assure that test, control, and reference substances or mixtures have been appropriately tested for identity, strength, purity, stability, and uniformity, as applicable.

(e) Assure that personnel, resources, facilities, equipment, materials and methodologies are available as scheduled.

(f) Assure that personnel clearly understand the functions they are to perform.

(g) Assure that any deviations from these regulations reported by the quality assurance unit are communicated to the study director and corrective actions are taken and documented.

§ 806.33 Study director.

For each study, a scientist or other professional of appropriate education, training, and experience, or combination thereof, shall be identified as the study director. The study director has overall responsibility for the technical conduct of the study, as well as for the interpretation, analysis, documentation, and reporting of results, and represents the single point of study control. The study director shall assure that:

(a) The protocol, including any change, is approved as provided by § 806.120 and is followed.

(b) All experimental data, including observations of unanticipated responses of the test system are accurately recorded and verified.

(c) Unforeseen circumstances that may affect the quality and integrity of the study are noted when they occur, and corrective action is taken and documented.

(d) Test systems are as specified in the protocol.

(e) All applicable GLPS regulations are followed.

(f) All raw data, documentation, protocols, specimens, and final reports are transferred to the archives during or at the close or termination of the study.

§ 806.35 Quality assurance unit.

(a) A testing facility shall have a quality assurance unit which shall be responsible for monitoring each study to assure management that the facilities, equipment, personnel, methods, practices, records, and controls are in conformance with the regulations in this part. For any given study, the quality assurance unit shall be entirely separate from and independent of the personnel engaged in the direction and conduct of that study. The quality assurance unit shall conduct inspections and maintain records appropriate to the study.

(b) The quality assurance unit shall:

(l) Maintain a copy of a master schedule sheet of all studies conducted at the testing facility indexed to permit expedient retrieval, which identifies the test substance, the test system, nature of study, date study was initiated, current status of each study, date of completion or termination if study is not ongoing, identity of the sponsor, and name of the study director.

(2) Maintain copies of all protocols until study completion pertaining to all studies for which the unit is responsible.

(3) Inspect each study at intervals adequate to ensure the integrity of the study and maintain written and properly signed records of each periodic inspection showing the date of the

inspection, the study inspected, the phase or segment of the study inspected, the person performing the inspection, findings and problems, action recommended and taken to resolve existing problems, and any scheduled date for reinspection. Any problems which are likely to affect study integrity found during the course of an inspection shall be brought to the attention of the study director and management immediately.

(4) Periodically submit to management and the study director written status reports on each study, noting any problems and the corrective actions taken.

(5) Determine that no deviations from approved protocols or standard operating procedures were made without proper authorization and documentation.

(6) Review the final study report to assure that such report accurately describes the methods and standard operating procedures, and that the reported results accurately reflect the raw data of the study.

(7) Prepare and sign a statement to be included with the final study report which shall specify the dates inspections were made and findings reported to management and to the study director.

(c) The responsibilities and procedures applicable to the quality assurance unit, the records maintained by the quality assurance unit, and the method of indexing such records shall be in writing and shall be maintained. These items including inspection dates, the study inspected, the phase or segment of the study inspected, and the name of the individual performing the inspection shall be made available for inspection to authorized employees or duly designated representatives of EPA or FDA.

(d) An authorized employee or a duly designated representative of EPA or FDA shall have access to the written procedures established for the inspection and may request testing facility management to certify that inspections are being implemented, performed, documented, and followed-up in accordance with this paragraph.

Subpart C—Facilities

§ 806.41 General.

Each testing facility shall be of suitable size and construction to facilitate the proper conduct of studies. Testing facilities which are not located within an indoor controlled environment shall be of suitable location to facilitate the proper conduct of studies. Testing facilities shall be designed so that there is a degree of separation that will prevent any function or activity from having an adverse effect on the study.

§ 806.43 Test system care facilities.

(a) A testing facility shall have a sufficient number of animal rooms or other test system areas, as needed, to ensure: proper separation of species or test systems, isolation of individual projects, quarantine or isolation of animals or other test systems, and routine or specialized housing of animals or other test systems.

(1) In tests with plants or aquatic animals, proper separation of species can be accomplished within a room or area by housing them separately in different chambers or aquaria. Separation of species is unnecessary where the protocol specifies the simultaneous exposure of two or more species in the same chamber, aquarium, or housing unit.

(2) Aquatic toxicity tests for individual projects shall be isolated to the extent necessary to prevent cross-contamination of different chemicals used in different tests.

(b) A testing facility shall have a number of animal rooms or other test system areas separate from those described in paragraph (a) of this section to ensure isolation of studies being done with test systems or test, control, and reference substances known to be biohazardous, including volatile substances, aerosols, radioactive materials, and infectious agents.

(c) Separate areas shall be provided, as appropriate, for the diagnosis, treatment, and control of laboratory test system diseases. These areas shall provide effective isolation for the housing of test systems either known or suspected of being diseased, or of being carriers of disease, from other test systems.

(d) Facilities shall have proper provisions for collection and disposal of contaminated water, soil, or other spent materials. When animals are housed, facilities shall exist for the collection and disposal of all animal waste and refuse or for safe sanitary storage of waste before removal from the testing facility. Disposal facilities shall be so provided and operated as to minimize vermin infestation, odors, disease hazards, and environmental contamination.

(e) Facilities shall have provisions to regulate environmental conditions (e.g., temperature, humidity, photoperiod) as specified in the protocol.

(f) For marine test organisms, an adequate supply of clean sea water or artificial sea water (prepared from deionized or distilled water and sea salt mixture) shall be available. The ranges of composition shall be as specified in the protocol.

(g) For freshwater organisms, an adequate supply of clean water of the appropriate hardness, pH, and temperature, and which is free of contaminants capable of interfering with the study, shall be available as specified in the protocol.

(h) For plants, an adequate supply of soil of the appropriate composition, as specified in the protocol, shall be available as needed.

§ 806.45 Test system supply facilities.

(a) There shall be storage areas, as needed, for feed, nutrients, soils, bedding, supplies, and equipment. Storage areas for feed nutrients, soils, and bedding shall be separated from areas where the test systems are located and shall be protected against infestation or contamination. Perishable supplies shall be preserved by appropriate means.

(b) When appropriate, plant supply facilities shall be provided. As specified in the protocol, these include:

(1) Facilities for holding, culturing, and maintaining algae and aquatic plants.

(2) Facilities for plant growth, including, but not limited to, greenhouses, growth chambers, light banks, and fields.

(c) When appropriate, facilities for aquatic animal tests shall be provided. These include, but are not limited to, aquaria, holding tanks, ponds, and ancillary equipment, as specified in the protocol.

§ 806.47 Facilities for handling test, control, and reference substances.

(a) As necessary to prevent contamination or mixups, there shall be separate areas for:

(1) Receipt and storage of the test, control, and reference substances.

(2) Mixing of the test, control, and reference substances with a carrier, e.g., feed.

(3) Storage of the test, control, and reference substance mixtures.

(b) Storage areas for test, control, and/or reference substance and for test, control, and/or reference mixtures shall be separate from areas housing the test systems and shall be adequate to preserve the identity, strength, purity, and stability of the substances and mixtures.

§ 806.49 Laboratory operation areas.

Separate laboratory space and other space shall be provided, as needed, for the performance of the routine and specialized procedures required by studies.

§ 806.51 Specimen and data storage facilities.

Space shall be provided for archives, limited to access by authorized personnel only, for the storage and retrieval of all raw data and specimens from completed or terminated studies.

Subpart D—Equipment

§ 806.61 Equipment design.

Equipment used in the generation, measurement, or assessment of data and equipment used for facility environmental control shall be of appropriate design and adequate capacity to function according to the protocol and shall be suitably located for operation, inspection, cleaning, and maintenance.

§ 806.63 Maintenance and calibration of equipment.

(a) Equipment shall be adequately inspected, cleaned, and maintained. Equipment used for the generation, measurement, or assessment of data shall be adequately tested, calibrated, and/or standardized.

(b) The written standard operating procedures required under § 806.81(b)(11) shall set forth in sufficient detail the methods, materials, and schedules to be used in the routine inspection, cleaning, maintenance, testing, calibration, and/or standardization of equipment, and shall specify, when appropriate, remedial action to be taken in the event of failure or malfunction of equipment. The written standard operating procedures shall designate the person(s) responsible for the performance of each operation.

(c) Written records shall be maintained of all inspection, maintenance, testing, calibrating, and/or standardizing operations. These records, containing the date of the operations, shall describe whether the maintenance operations were routine and followed the written standard operating procedures. Written records shall be kept of nonroutine repairs performed on equipment as a result of failure and malfunction. Such records shall document the nature of the defect, how and when the defect was discovered, and any remedial action taken in response to the defect.

(d) The integrity of data from computers, data processors, and automated laboratory procedures involved in the collection, generation, or measurement of data shall be ensured through appropriate validation processes, maintenance procedures, disaster recovery, and security measures.

Subpart E—Testing Facilities Operation

§ 806.81 Standard operating procedures.

(a) A testing facility shall have standard operating procedures in writing setting forth study methods that management is satisfied are adequate to ensure the quality and integrity of the data generated in the course of a study. All deviations in a study from standard operating procedures shall be authorized by the study director and shall be documented in the raw data. Significant changes in established standard operating procedures shall be properly authorized in writing by management.

(b) Standard operating procedures shall be established for, but not limited to, the following:

(1) Test system area preparation.

(2) Test system care.

(3) Receipt, identification, storage, handling, mixing, and method of sampling of the test, control, and reference substances.

(4) Test system observations.

(5) Laboratory or other tests.

(6) Handling of test systems found moribund or dead during study.

(7) Necropsy of test systems or postmortem examination of test systems.

(8) Collection and identification of specimens.

(9) Histopathology.

(10) Data handling, storage, and retrieval.

(11) Maintenance and calibration of equipment.

(12) Transfer, proper placement, and identification of test systems.

(c) Each laboratory or other study area shall have immediately available manuals and standard operating procedures relative to the laboratory or field procedures being performed. Published literature may be used as a supplement to standard operating procedures.

(d) A historical file of standard operating procedures, and all revisions thereof, including the dates of such revisions, shall be maintained.

§ 806.83 Reagents and solutions.

All reagents and solutions in the laboratory areas shall be labeled to indicate identity, titer or concentration, storage requirements, and expiration date. Deteriorated or outdated reagents and solutions shall not be used. As an alternative to labeling wash bottles and transfer bottles with the expiration date, the testing facility may develop a well-documented performance standard to ensure that the reagents or solutions have not deteriorated or are outdated.

§ 806.90 Animal and other test system care.

(a) There shall be standard operating procedures for the housing, feeding, handling, and care of animals and other test systems.

(b) All newly received test systems from outside sources shall be isolated and their health status or appropriateness for the study shall be evaluated. This evaluation shall be in accordance with acceptable veterinary medical practice or scientific methods.

(c) At the initiation of a study, test systems shall be free of any disease or condition that might interfere with the purpose or conduct of the study. If during the course of the study, the test systems contract such a disease or condition, the diseased test systems should be isolated, if necessary. These test systems may be treated for disease or signs of disease provided that such treatment does not interfere with the study. The diagnosis, authorization of treatment, description of treatment, and each date of treatment shall be documented and shall be retained.

(d) Warm-blooded animals, adult reptiles, and adult terrestrial amphibians used in laboratory procedures that require manipulations and observations over an extended period of time or in studies that require these test systems to be removed from and returned to their test system-housing units for any reason (e.g., cage cleaning, treatment, etc.), shall receive appropriate identification (e.g., tattoo, color code, ear tag, ear punch, etc.). All information needed to specifically identify each test system within the test system-housing unit shall appear on the outside of that unit. Suckling mammals and juvenile birds are excluded from the requirement of individual identification unless otherwise specified in the protocol.

(e) Except as specified in paragraph (e)(1) of this section, test systems of different species shall be housed in separate rooms when necessary. Test systems of the same species, but used in different studies, should not ordinarily be housed in the same room when inadvertent exposure to test, control, or reference substances or test system mixup could affect the outcome of either study. If such mixed housing is necessary, adequate differentiation by space and identification shall be made.

(1) Plants, invertebrate animals, aquatic vertebrate animals, and organisms that may be used in multispecies tests need not be housed in

separate rooms, provided that they are adequately segregated to avoid mixup and cross contamination.

(2) [Reserved]

(f) Cages, racks, pens, enclosures, aquaria, holding tanks, ponds, growth chambers, and other holding, rearing and breeding areas, and accessory equipment, shall be cleaned and sanitized at appropriate intervals.

(g) Feed, soil, and water used for the test systems shall be analyzed periodically to ensure that contaminants known to be capable of interfering with the study and reasonably expected to be present in such feed, soil, or water are not present at levels above those specified in the protocol. Documentation of such analyses shall be maintained as raw data.

(h) Bedding used in animal cages or pens shall not interfere with the purpose or conduct of the study and shall be changed as often as necessary to keep the animals dry and clean.

(i) If any pest control or cleaning materials are used, the use shall be documented. Cleaning and pest control materials that interfere with the study shall not be used.

(j) All plant and animal test systems shall be acclimatized to the environmental conditions of the test, prior to their use in a study.

Subpart F—Test, Control, and Reference Substances

§ 806.105 Test, control, and reference substance characterization.

(a) The identity, strength, purity, and composition, or other characteristics which will appropriately define the test, control, or reference substance shall be determined for each batch and shall be documented before its use in a study. Methods of synthesis, fabrication, or derivation of the test, control, or reference substance shall be documented by the sponsor or the testing facility, and the location of such documentation shall be specified.

(b) When relevant to the conduct of the study, the solubility of each test, control, or reference substance shall be determined by the testing facility or the sponsor before the experimental start date or concurrently according to written standard operating procedures, which provide for periodic analysis of each batch. The stability of the test, control, or reference substance shall be determined before the experimental start date or concurrently according to written standard operating procedures, which provide for periodic analysis of each batch.

(c) Each storage container for a test, control, or reference substance shall be labeled by name, Chemical Abstracts Service (CAS) registry number or code number, batch number, expiration date, if any, and storage conditions necessary to maintain the identity, strength, purity, and composition of the test, control, or reference substance. Storage containers shall be assigned to a particular test substance for the duration of the study. With the study director's written approval, test substance storage containers need not be retained after use, provided that full documentation of the disposition of the containers is maintained as raw data for the study. This documentation shall include:

(1)(i) Information of shipments pertaining to each container leaving the storage site (examples of such records are shipping request records, bills of lading, carrier bills, and monthly inventories of warehouse activity).

(ii) Test substance receipt records at each testing facility.

(iii) Complete use logs of material taken from containers.

(iv) A record of the final destination of the container, including the place and date of disposal or reclaiming, and any appropriate receipts.

(2) An inventory record of empty containers before disposal, including sufficient information to uniquely identify containers, maintained in an up-to-date manner recording all arrivals of empty containers and their disposal. This record shall be maintained as raw data for this study.

(3) Locations of facilities; where test substance is stored; where empty containers are stored prior to disposal; where records of use, shipment, and disposal of containers are maintained; and where the test substance is used in studies (i.e., testing facility).

(d) For studies of more than 4 weeks from the experimental start to completion dates, reserve samples from each batch of test, control, and reference substances shall be retained for the period of time provided by § 806.195.

(e) The stability of test, control, and reference substances under storage conditions at the test site shall be known for all studies.

§ 806.107 Test, control, and reference substance handling.

Procedures shall be established for a system for the handling of the test, control, and reference substances to ensure that:

(a) There is proper storage.

(b) Distribution is made in a manner designed to preclude the possibility of contamination, deterioration, or damage.

(c) Proper identification is maintained throughout the distribution process.

(d) The receipt and distribution of each batch is documented. Such documentation shall include the date and quantity of each batch distributed or returned.

§ 806.113 Mixtures of substances with carriers.

(a) For each test, control, or reference substance that is mixed with a carrier, tests by appropriate analytical methods shall be conducted:

(1) To determine the uniformity of the mixture and to determine, periodically, the concentration of the test, control, or reference substance in the mixture.

(2) When relevant to the conduct of the study, to determine the solubility of each test, control, or reference substance in the mixture; or if the solubility of the substance is difficult to determine, appropriate homogeneity data, by the testing facility or the sponsor before the experimental start date.

(3) To determine the stability of the test, control, or reference substance in the mixture before the experimental start date or concomitantly according to written standard operating procedures, which provide for periodic analysis of each batch.

(b) Tank mixes prepared for application to soil or plants by typical agricultural practices within a 12-hour period between preparation and application, and solutions prepared for immediate administration in mammalian acute toxicology studies, metabolism studies, or mutagenicity studies, are exempt from requirements for concentration determinations (but not from uniformity determinations) under paragraph (a)(1) of this section and are exempt from requirements for solubility determinations under paragraph (a)(2) of this section.

(c) Where any of the components of the test, control, or reference substance carrier mixture has an expiration date, that date shall be clearly shown on the container. If more than one component has an expiration date, the earliest date shall be shown.

(d) If a vehicle is used to facilitate the mixing of a test substance with a carrier, assurance shall be provided that the vehicle does not interfere with the integrity of the test.

Subpart G—Protocol for and Conduct of a Study

§ 806.120 Protocol.

(a) Each study shall have an approved written protocol that clearly indicates the objectives and all methods for the conduct of the study. The protocol shall contain but shall not necessarily be limited to the following information:

(1) A descriptive title and statement of the purpose of the study.

(2) Identification of the test, control, and reference substance by name, Chemical Abstracts Service (CAS) registry number or code number. When a reference substance for a metabolite cannot be identified prior to the beginning of a study (only in the case of metabolism studies), it is not necessary to identify the substance in the protocol. However, a statement must be included that the identity of the reference substance will be determined during the course of the study and maintained as raw data.

(3) The name and address of the sponsor and the name and address of the testing facility at which the study is being conducted.

(4) The proposed experimental start and termination dates.

(5) Justification for selection of the test system.

(6) Where applicable, the number, body weight range, sex, source of supply, species, strain, substrain, and age of the test system.

(7) The procedure for identification of the test system.

(8) A description of the experimental design, including methods for the control of bias.

(9) Where applicable, a description and/or identification of the diet used in the study as well as solvents, emulsifiers and/or other materials used to solubilize or suspend the test, control, or reference substances before mixing with the carrier. The description shall include specifications for acceptable levels of contaminants that are reasonably expected to be present in the dietary materials and are known to be capable of interfering with the purpose or conduct of the study if present at levels greater than established by the specifications.

(10) The route of administration and the reason for its choice.

(11) Each dosage level, expressed in milligrams per kilogram of body or test system weight or other appropriate units, of the test, control, or reference substance to be administered and the method and frequency of administration.

(12) The type and frequency of tests, analyses, and measurements to be made.

(13) The records to be maintained.

(14) The date of approval of the protocol by the sponsor and the dated signature of the study director.

(15) A statement of the statistical method to be used.

(b) All changes in or revisions of an approved protocol and the reasons therefore shall be documented, signed by the study director, dated, and maintained with the protocol.

(c) Discontinued studies or studies otherwise terminated before completion shall be finalized by writing a protocol amendment providing the reason(s) for termination. All documentation for terminated studies including the protocol, protocol amendment(s), and raw data, if collected, shall be retained as provided at § 806.195.

§ 806.130 Conduct of a study.

(a) The study shall be conducted in accordance with the protocol.

(b) The test systems shall be monitored in conformity with the protocol.

(c) Specimens shall be identified by test system, study, nature, and date of collection. This information shall be located on the specimen container or shall accompany the specimen in a manner that precludes error in the recording and storage of data.

(d) In animal studies where histopathology is required, records of gross findings for a specimen from postmortem observations shall be available to a pathologist when examining that specimen histopathologically.

(e) All data generated during the conduct of a study, except those that are generated by automated data collection systems, shall be recorded directly, promptly, and legibly in ink. All data entries shall be dated on the day of entry and signed or initialed by the person entering the data. Any change in entries shall be made so as not to obscure the original entry, shall indicate the reason for such change, and shall be dated and signed or identified at the time of the change. In automated data collection systems, the individual responsible for direct data input shall be identified at the time of data input. Any change in automated data entries shall be made so as not to obscure the original entry, shall indicate the reason for change, shall be dated, and the responsible individual shall be identified.

§ 806.135 Physical and chemical characterization studies.

(a) All provisions of the GLPS shall apply to physical and chemical characterization studies designed to determine stability, solubility, octanol water partition coefficient, volatility, and persistence (such as biodegradation, photodegradation, and chemical degradation studies) of test, control, or reference substances.

(b) The following GLPS shall not apply to studies, other than those designated in paragraph (a) of this section, designed to determine physical and chemical characteristics of a test, control, or reference substance: §§ 806.31(c), (d), and (g), 806.35(b) and (c), 806.43, 806.45, 806.47, 806.49, 806.81(b)(1), (2), (6) through (9), and (12), 806.90, 806.105(a) through (d), 806.113, 806.120(a)(5) through (12), and (15), 806.185(a)(5) through (8), (10), (12), and (14), and 806.195(c) and (d).

Subparts H and I—[Reserved]

Subpart J—Records and Reports

§ 806.185 Reporting of study results.

(a) With the exception of discontinued or otherwise terminated studies, as provided at § 806.120(c), a final report shall be prepared for each study and shall include, but not necessarily be limited to, the following:

(1) Name and address of the facility performing the study and the dates on which the study was initiated and was completed.

(2) Objectives and procedures stated in the approved protocol, including any changes in the original protocol.

(3) Statistical methods employed for analyzing the data.

(4) The test, control, and reference substances identified by name, Chemical Abstracts Service (CAS) registry number or code number, strength, purity, and composition, or other appropriate characteristics.

(5) Stability and, when relevant to the conduct of the study, solubility of the test, control, and reference substances under the conditions of administration.

(6) A description of the methods used.

(7) A description of the test system used. Where applicable, the final report shall include the number of animals used, sex, body weight range, source of supply, species, strain and substrain, age, and procedure used for identification. For other test organisms (plants, bacteria), similarly detailed descriptions of the test system are required.

(8) A description of the dosage, dosage regimen, route of administration, and duration.

(9) A description of all circumstances that may have affected the quality or integrity of the data.

(10) The name of the study director, the names of other scientists or professionals, and the names of all supervisory personnel, involved in the study.

(11) A description of the transformations, calculations, or operations performed on the data, a summary and analysis of the data, and a statement of the conclusions drawn from the analysis.

(12) The signed and dated reports of each of the individual scientists or other professionals involved in the study, including each person who, at the request or direction of the testing facility or sponsor, conducted an analysis or evaluation of data or specimens from the study after data generation was completed.

(13) The locations where all specimens, raw data, and the final report are to be stored.

(14) The statement prepared and signed by the quality assurance unit as described in § 806.35(b)(7).

(b) The final report shall be signed and dated by the study director.

(c) Corrections or additions to a final report shall be in the form of an amendment by the study director. The amendment shall clearly identify that part of the final report that is being added to or corrected and the reasons for the correction or addition, and shall be signed and dated by the person responsible. Modification of a final report to comply with the submission requirements of EPA does not constitute a correction, addition, or amendment to a final report.

(d) A copy of the final report and of any amendment to it shall be maintained by the sponsor and the test facility.

§ 806.190 Storage and retrieval of records and data.

(a) All raw data, documentation, records, protocols, specimens, and final reports generated as a result of a study shall be retained. Specimens obtained from mutagenicity tests, specimens of soil, water, and plants, and wet specimens of blood, urine, feces, and biological fluids, do not need to be retained after quality assurance verification. Correspondence and other documents relating to interpretation and evaluation of data, other than those documents contained in the final report, also shall be retained.

(b) There shall be archives for orderly storage and expedient retrieval of all raw data, documentation, protocols, specimens, and interim and final reports. Conditions of storage shall minimize deterioration of the documents or specimens in accordance with the requirements for the time period of their retention and the nature of the documents of specimens. A testing facility may contract with commercial archives to provide a repository for all material to be retained. Raw data and specimens may be retained elsewhere provided that the archives have specific reference to those other locations.

(c) An individual shall be identified as responsible for the archives.

(d) Only authorized personnel shall enter the archives.

(e) Material retained or referred to in the archives shall be indexed to permit expedient retrieval.

§ 806.195 Retention of records.

(a) Record retention requirements set forth in this section do not supersede the record retention requirements of any other regulations in this subchapter.

(b) Except as provided in paragraph (c) of this section, documentation records, raw data, and specimens pertaining to a study and required to be retained by this part shall be retained in the archive(s) for:

(1) In the case of applicability under § 806.1(a), whichever of the following periods is longest:

(i) In the case of any study used to support an application for a research or marketing permit approved by EPA, the period during which the sponsor or any successor(s) hold(s) any research or marketing permit to which the study is pertinent.

(ii) A period of at least 5 years following the date on which the results of the study are submitted to EPA in support of an application for a research or marketing permit.

(iii) In other situations (e.g., where the study does not result in the submission of the study in support of an application for a research or marketing permit), a period of at least 2 years following the date on which the study is completed, terminated, or discontinued.

(2) In the case of applicability under § 806.1(b):

(i) In the case of a study required to be conducted under TSCA section 4 or section 5, except for those items listed in paragraph (c) of this section, all documentation, records, raw data, and specimens pertaining to that study and required to be retained by this part shall be retained in the archive(s) for a period of at least 5 years following the date on which the final report of that required study is submitted to EPA.

(ii) [Reserved]

(c) Wet specimens, samples of test, control, or reference substances, and specially prepared material which are relatively fragile and differ markedly in stability and quality during storage, shall be retained only as long as the quality of the preparation affords evaluation. Specimens obtained from mutagenicity tests, specimens of soil, water, and plants, and wet specimens of blood, urine, feces, and biological fluids, do not need to be retained after quality assurance verification. In no case shall retention be required for longer periods than those set forth in paragraph (b) of this section.

(d) The master schedule sheet, copies of protocols, and records of quality assurance inspections, as required by § 806.35(c) shall be maintained by the quality assurance unit as an easily accessible system of records for the period of time specified in paragraph (b) of this section.

(e) Summaries of training and experience and job descriptions required to be maintained by § 806.29(b) may be retained along with all other testing facility employment records for the length of time specified in paragraph (b) of this section.

(f) Records and reports of the maintenance and calibration and inspection of equipment, as required by § 806.63(b) and (c), shall be retained for the length of time specified in paragraph (b) of this section.

(g) If a facility conducting testing or an archive contracting facility goes out of business, all raw data, documentation, and other material specified in this section shall be transferred to the archives of the sponsor of the study. EPA shall be notified in writing of such a transfer.

(h) Specimens, samples, or other non-documentary materials need not be retained after EPA has notified in writing the sponsor or testing facility holding the materials that retention is no longer required by EPA. Such notification normally will be furnished upon request after EPA or FDA has completed an audit of the particular study to which the materials relate and EPA has concluded that the study was conducted in accordance with this part.

(i) Records required by this part may be retained either as original records or as true copies such as photocopies, microfilm, microfiche, or other accurate reproductions of the original records.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 99–363; FCC 99–406]

Implementation of the Satellite Home Viewer Improvement Act of 1999: Retransmission Consent Issues.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to implement certain aspects of the

Satellite Home Viewer Improvement Act of 1999, which was enacted on November 29, 1999. Among other things, the new legislation requires broadcasters, until the year 2006, to negotiate in good faith with satellite carriers and other multichannel video programming distributors (''MVPDs'') with respect to their retransmission of the broadcasters'' signals, and prohibits broadcasters from entering into exclusive retransmission agreements. We seek comment on these issues. This document also seeks comment on the adoption of implementing regulations relating to the exercise by television broadcast stations of the right to grant retransmission consent to satellite carriers and other MVPDs.

DATES: Comments by the public on the Exclusivity and Good Faith Negotiation Sections are due January 12, 2000; reply comments are due January 19, 2000. Comments on Retransmission Consent Election Process and Administrative Matters are due February 1, 2000; reply comments are due February 20, 2000. Written comments by the public on the proposed information collections relating to the entire Notice are due February 1, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before February 28, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Virginia Huth, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to vhuth@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Steve Broeckaert at (202) 418–7200 or via internet at sbroecka@fcc.gov. For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (''NPRM''), FCC 99–406, adopted December 21, 1999; released December 22, 1999. The full text of the Commission's NPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257) at its headquarters, 445 12th Street, SW Washington, D.C. 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, D.C. 20036, or may be reviewed via internet at http://www.fcc.gov/csb/

Synopsis of the Notice of Proposed Rulemaking

I. Introduction

1. In this Notice of Proposed Rulemaking (''*Notice*''), we seek comment on our implementation of certain aspects of the Satellite Home Viewer Improvement Act of 1999 (''1999 SHVIA''), which was enacted on November 29, 1999. This act authorizes satellite carriers to add more local and national broadcast programming to their offerings, and to make that programming available to subscribers who previously have been prohibited from receiving broadcast fare via satellite under compulsory licensing provisions of the copyright law. The legislation generally seeks to place satellite carriers on an equal footing with local cable operators when it comes to the availability of broadcast programming, and thus give consumers more and better choices in selecting a multichannel video program distributor (''MVPD''). We intend to implement the 1999 SHVIA aggressively to ensure that the pro-competitive goals underlying this important legislation are realized.

2. Among other things, the new legislation requires broadcasters, until 2006, to negotiate in good faith with satellite carriers and other MVPDs with respect to their retransmission of the broadcasters' signals, and prohibits broadcasters from entering into exclusive retransmission agreements. We are initiating, and plan to conclude, this rulemaking well ahead of our statutory deadlines for doing so because of the vital importance of these provisions of the 1999 SHVIA. Strict adherence by broadcasters to the good faith requirement is crucial if the statutory objectives are to be fulfilled. This *Notice* also seeks comment on the adoption of implementing regulations relating to the exercise by television broadcast stations of the right to grant retransmission consent. Retransmission consent is the process whereby television broadcasters negotiate and consent to carriage of their signals by MVPDs such as cable television operators and satellite carriers.

II. Retransmission Consent

3. The Commission, in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues (''Broadcast Signal Carriage Order'')* (58 FR 17350), implemented the retransmission consent provisions of the Cable Television Consumer Protection and Competition Act of 1992 (''1992 Cable Act''). The 1992 Cable Act amended section 325 of the Communications Act of 1934 by adding provisions governing retransmission of broadcast signals by cable systems and other MVPDs. Section 325 of the 1992 Cable Act provided that television broadcast stations were required to make an election every three years whether to proceed under the mandatory cable signal carriage rules or to govern their relationship with cable operators or other MVPDs by electing retransmission consent. Congress indicated that the retransmission consent and must-carry rule election provisions adopted pursuant to the 1992 Cable Act provide a model for implementation of the retransmission consent election provisions of the 1999 SHVIA.

Retransmission Consent and the Election Process

4. Section 1009 of the 1999 SHVIA amends section 325(b)(1) and provides that no cable system or other MVPD shall transmit the signal of a broadcasting station, or any part thereof, except: (A) with the express authority of the originating station; (B) pursuant to section 614, in the case of a station electing to assert the right to carriage by a cable operator; or (C) pursuant to section 338, in the case of a station electing to assert the right to carriage by a satellite carrier. Thereafter, the 1999 SHVIA provides that every three years television stations covered by 325(b) are required to elect retransmission consent pursuant to section 325 or must-carry pursuant to sections 614 or 338.

5. Amended section 325(b)(2) provides five exceptions to the retransmission consent requirement of section 325(b)(1). The amendment provides that the retransmission consent requirement does not apply to: (1) noncommercial television broadcast stations; (2) retransmission, in certain circumstances, of the signal of a superstation outside the station's local market by a satellite carrier; (3) until December 31, 2004, retransmission of signals of network stations directly to a home satellite antenna, if the subscriber receiving the signal is located in an area outside the local market of such station and resides in an unserved household; (4) retransmission, in certain circumstances, by a cable operator or other MVPD other than a satellite carrier of the signal of a superstation outside the station's local market; and (5) during

the six month period following the date of enactment of the 1999 SHVIA, the retransmission of the signal of a television broadcast station within the station's local market by a satellite carrier directly to its subscribers. In other words, subject to the limitations set forth therein, MVPDs, including satellite carriers, may freely transmit the signals of any of the broadcasters satisfying the criteria set forth in section 325(b)(2) without obtaining retransmission consent from such broadcasters.

6. Section 325(b)(3)(C) directs the Commission, within 45 days after the date of enactment of the 1999 SHVIA, to commence a rulemaking to administer the limitations contained in section 325(b)(2). At the outset, we note that this *Notice* relates to retransmission consent only. The exercise of must carry rights by broadcasters with regard to satellite carriers does not commence until January 1, 2002 and will be addressed in a subsequent Notice and Rulemaking proceeding. As part of that proceeding, we will seek comment on any necessary or prudent revisions to our retransmission consent rules as a result of the initiation of satellite must carry.

7. The Commission was directed by Congress to undertake a rulemaking to implement a substantially similar provision of the 1992 Cable Act. In the *Broadcast Signal Carriage Order,* the Commission adopted such regulations. The rules implementing this provision are codified at 47 CFR 76.64. We seek comment on the appropriate manner to implement the provisions of amended section 325(b)(2). In particular, we seek comment on whether the amended provisions should be incorporated into existing 47 CFR 76.64, or whether some other regulatory framework or procedures would more appropriately implement amended section 325(b)(2). We also seek comment on any other issues relevant to the implementation of section 325(b)(2). In addition, we note that, although the statute is entitled the *Satellite* Home Viewer Improvement Act, some of the amendments Congress enacted to section 325 appear to have general impact upon the retransmission consent provisions as applied to all MVPDs. We tentatively conclude that such was Congress' intent and seek comment on this tentative conclusion.

8. Congress also amended section 325(b) by adding new paragraph (3)(C)(i), which requires the Commission to adopt regulations which shall ''establish election time periods that correspond with those regulations adopted under subparagraph (B) of this paragraph. * * *'' Commission adopted the required regulations in the *Broadcast Signal Carriage Order.* The regulations are codified in 47 CFR 76.64.

9. We seek comment on the appropriate manner to implement section 325(b)(3)(C)(i). In particular we seek comment on whether, following an initial election period applicable only to satellite carriers, the Commission should merely incorporate the satellite carrier must carry-retransmission consent election cycle into the Commission's regulations, employing the same rules and procedures the Commission adopted in response to the 1992 Cable Act. In the alternative, we seek comment on whether a different election cycle with different procedures is required to appropriately implement section 325(b)(3)(C)(i) and what the effect would be of having different procedures in the cable and satellite contexts. In this regard, we seek comment on any statutory, regulatory or technical differences between satellite carriers and other MVPDs that would justify a different election scheme. 47 CFR 76.64(g) requires that broadcasters make consistent must carry-retransmission consent elections where the franchise areas of cable systems overlap. We seek comment on the consistent election requirement and how it would be implemented, if at all, in the context of any election cycle in which satellite carriers participate. We also seek comment on any other issues relevant to the implementation of section 325(b)(3)(C)(i).

III. Exclusivity and Good Faith Negotiation

A. Good Faith Negotiation Requirement

10. Congress further amended section 325(b) of the Communications Act, requiring the Commission to adopt regulations that shall:

> * * * until January 1, 2006, prohibit a television broadcast station that provides retransmission consent from * * * failing to negotiate in good faith, and it shall not be a failure to negotiate in good faith if the television broadcast station enters into retransmission consent agreements containing different terms and conditions, including price terms, with different multichannel video programming distributors if such different terms and conditions are based on competitive marketplace considerations.

The Joint Explanatory Statement of the Committee of Conference (''Conference Report'') does not explain or clarify the statutory language and merely states that:

> The regulations would, until January 1, 2006, prohibit a television broadcast station from * * * refusing to negotiate in good faith regarding retransmission consent agreements. A television station may generally offer different retransmission consent terms or conditions, including price terms, to different distributors. The [Commission] may determine that such different terms represent a failure to negotiate in good faith only if they are not based on competitive marketplace considerations.

Accordingly, we seek comment on the good faith negotiation requirement of section 325(b)(3)(C).

11. Congress did not expressly define the term ''good faith'' in the statutory language or the legislative history other than to instruct that retransmission consent agreements containing different terms and conditions, including price terms, with different video programming distributors do not reflect a failure to negotiate in good faith on behalf of the television broadcast station if such different terms and conditions are based on competitive marketplace conditions. While Congress did not expressly define what constitutes good faith under section 325(b)(3)(C), Congress has signaled its intention to impose some heightened duty of negotiation on broadcasters in the retransmission consent process. We seek to fulfill Congress' intent by adopting substantive and procedural rules that are clear and subject to swift and effective enforcement. We therefore seek comment on the criteria that should be employed to define ''good faith.'' We also seek comment on whether the duty of good faith negotiation applies equally to the MVPD negotiating a retransmission consent agreement. We seek comment on whether we need to explicitly define what constitutes good faith under section 325(b)(3)(C). The Uniform Commercial Code (''UCC'') defines the term ''good faith'' as ''honesty in fact in the conduct of the transaction concerned.'' In addition, Black's Law Dictionary defines good faith as ''an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice, and the absence of design to defraud or to seek an unconscionable advantage * * *'' We seek comment on whether to adopt either of these definitions, or some other explicit definition of the term good faith.

12. We note that, in other contexts within both the Communications Act and other Federal laws, Congress has imposed a good faith negotiation requirement upon parties subject to a federal statutory scheme. For example, section 8(d) of the Taft-Hartley Act details the collective bargaining duty of

both employers and employees, providing that:

> To bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment * * * but such obligation does not compel either party to agree to a proposal or require the making of a concession.

In determining good faith under section 8(d), the National Labor Relations Board (''NLRB'') and the courts apply two independent tests to see whether a party has acted in good faith during collective bargaining. In one test, the NLRB applies an objective set of criteria to determine whether a party has violated one or more enumerated *per se* violations of the duty to negotiate in good faith. In the second test, the NLRB subjectively examines the ''totality of the circumstances'' evidencing a party's behavior during negotiations to determine whether the duty to negotiate in good faith has been violated. The objective test allows the NLRB to single out specific recurring or particularly damaging behavior. On the other hand, the subjective test allows the NLRB to punish behavior that would not by itself constitute a *per se* violation, but when examined along with other suspect behavior constitutes a violation of the duty to negotiate in good faith.

13. Congress imposed a good faith negotiation requirement upon common carriers as part of the Telecommunications Act of 1996 (''1996 Act''). Section 251(c)(1) of the Communications Act imposes on incumbent local exchange carriers (''ILECs''):

> The duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

In implementing section 251(c)(1), the Commission adopted a two-part test to determine good faith similar to that used by the NLRB. Reasoning that it would be futile to try to determine in advance every possible action that might be inconsistent with the duty to negotiate in good faith, the Commission found that it was appropriate to identify factors or practices that may be evidence of failure to negotiate in good faith, but that need to be considered in light of all relevant circumstances. The Commission adopted a list of eight specific actions or practices that, among other unenumerated actions or practices to be determined on a case-by-case basis, violate the section 251(c)(1) duty to negotiate in good faith.

14. We seek comment on whether to adopt a two-part objective-subjective test for good faith similar to that embraced by the NLRB and by the Commission pursuant to section 251 of the Communications Act. In this regard, we seek comment on specific actions or practices which would constitute a *per se* violation of the duty to negotiate in good faith in accordance with section 325(b)(3)(C). Establishing a specific list of *per se* requirements or prohibitions would lend clarity to, and thus expedite, the negotiation process and would do likewise with respect to our enforcement mechanism, where enforcement became necessary. In addition to any other actions or practices, we ask commenters to address whether it would be appropriate to include in any such list provisions similar to the *per se* violations set forth in 47 CFR 51.301. Although the 47 CFR 51.301 process provides a basis for comment in this proceeding, we emphasize that the good faith standard of SHVIA is different in significant respects. We also seek comment on any other specific legal precedent upon which we should rely and any other regulatory approach that might appropriately implement the good faith negotiation requirement of section 325(b)(3)(C) of the Communications Act.

15. Section 325(b)(3)(C) permits television broadcast stations to negotiate in good faith retransmission consent agreements with different MVPDs with different terms and conditions, including price terms, provided that such different terms and conditions are based upon ''competitive marketplace considerations.'' We seek comment on what constitutes a competitive marketplace consideration. We seek to define the term as specifically as possible in this rulemaking, rather than to adopt a general standard to be fleshed out in subsequent adjudication. While we will resolve each case on its own merits, adding specification to our rules should add certainty to the negotiation process and reduce the number of cases presented to the Commission for adjudication. We note that the Commission has adopted non-discrimination standards in both the program access and open video system contexts. We seek comment on the relevance, if any, of these standards to what constitutes a ''competitive marketplace consideration.'' We seek comment on the scope of the relevant marketplace to which Congress refers. In addition, we seek comment on any other factors or approaches to determining what constitutes competitive marketplace considerations under section 325(b)(3)(C). In this regard, we note that the Commission has recently relaxed the television broadcast ownership rules, in certain circumstances, permitting companies to own two television broadcast stations within a given market. We seek comment on this development and its impact upon a broadcaster's duty to negotiate in good faith. For example, can companies with two broadcast stations within the same market negotiate a joint retransmission consent agreement or should they be required to negotiate separate arms-length retransmission consent agreements on behalf of each station?

16. The Commission is aware that direct broadcast satellite providers have entered into retransmission consent agreements with television broadcast stations that predate enactment of section 325(b)(3)(C). In addition, we note that we are also aware of agreements that have been executed since the enactment of the 1999 SHVIA. We seek comment on the impact on these agreements of the duty to negotiate in good faith.

B. Prohibition of Exclusive Retransmission Consent

17. Section 325(b) of the Communications Act also directs the Commission to commence a rulemaking proceeding that shall:

> until January 1, 2006, prohibit a television broadcast station that provides retransmission consent from engaging in exclusive contracts * * *

The accompanying Conference Report contains no language to clarify or explain the prohibition, stating only:

> The regulations would, until January 1, 2006, prohibit a television broadcast station from entering into an exclusive retransmission consent agreement with a multichannel video programming distributor * * *

18. The Commission established a similar prohibition in rulemakings following passage of the 1992 Cable Act. The 1992 Cable Act called upon the Commission to ''establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent * * *'' In the *Broadcast Signal Carriage Order,* the Commission recognized that ''exclusivity can be an efficient form of distribution, but, in view of the concerns that led Congress to regulate program access and signal carriage arrangements, we believe that it is appropriate to extend the same nonexclusivity safeguards to non-cable multichannel distributors with respect to television broadcast signals, at least initially.'' The Commission established

the following prohibition on exclusive retransmission contracts:

> Exclusive retransmission consent agreements are prohibited. No television broadcast station shall make an agreement with one multichannel distributor for carriage, to the exclusion of other multichannel distributors.

19. Section 325(b)(3)(C)(ii) requires us to ''until January 1, 2006, prohibit a television broadcast station that provides retransmission consent from engaging in exclusive contracts.'' We seek comment on what activities would constitute ''engaging in'' exclusive retransmission agreements. We note that section 325(b)(3)(C)(ii) prohibits a broadcaster from ''engaging in'' exclusive retransmission consent agreements, while the Conference Report describes the prohibition of ''entering into'' exclusive retransmission consent agreements. While the phrase ''engaging in'' could be interpreted to suggest a currently effective exclusive relationship, it would appear to allow television broadcast stations to negotiate future exclusive contracts that would take effect on or after January 1, 2006. We seek comment on whether the statute allows negotiation and execution of such agreements before January 1, 2006. We also note the distinction between the phrases ''engaging in'' and ''entering into.'' While the statutory phrase ''engaging in'' seems to indicate not only the act of entering into a contract, but also the acts necessary to performance of a contract, the phrase ''entering into'' seems to indicate only the process of negotiating and formalizing a contract. We seek comment on the significance, if any, of the Conference Report's use of the phrase ''entering into.''

20. The Conference Report states that the prohibition applies to ''an exclusive retransmission consent agreement with a multichannel video programming distributor'' until January 1, 2006. On its face, this provision would seem to sunset any prohibition on exclusive retransmission consent contracts for all multichannel video program distributors. Under this reading of the statute, the Commission's rule prohibiting exclusive retransmission consent agreements for cable operators would be deemed abrogated as of January 1, 2006. We seek comment on whether this was Congress' intent in enacting section 325(b)(3)(C)(ii). In addition, we seek comment regarding what public interest concerns are involved in such a sunset. Section 325(b)(3)(C)(ii) appears to have immediate effect. We seek comment on the existence of exclusive satellite carrier retransmission consent agreements that either predate the enactment of the 1999 SHVIA or under the Commission's rules implementing section 325(b)(3)(C)(ii). Assuming any such agreements exist, we seek comment on what, if anything, the Commission should do about them.

21. We seek comment on what evidence should be required to demonstrate the existence of an exclusive contract in violation of section 325(b)(3)(C)(ii). Presumably, if companies are engaged in an exclusive contractual relationship, they are in violation of the statute's prohibitions. However, there is no mechanism for determining whether such exclusive contracts exist. As such, it may be difficult for a MVPD not party to an exclusive retransmission consent agreement to determine whether one exists. We seek comment on approaches to establishing the existence of an exclusive retransmission consent agreement.

C. Procedural Issues

22. In directing the Commission to adopt regulations which, until January 1, 2006, prohibit exclusive carriage agreements and require good faith negotiation of retransmission consent agreements, Congress did not indicate what procedures the Commission should employ to enforce these provisions. We seek comment on what procedures the Commission should employ to enforce the provisions adopted pursuant to section 325(b)(3)(C). Our goal is swift and certain enforcement of the rules that Congress has directed us to adopt to further the pro-competitive goals of the 1999 SHVIA. Commenters should state whether the same set of enforcement procedures should apply to both the exclusivity prohibition and the good faith negotiation requirement, or whether the Commission should adopt different procedures tailored to each prohibition. We seek comment regarding whether special relief procedures of the type found in 47 CFR 76.7 which provides an appropriate framework for addressing issues arising under section 325(b)(3)(C). We seek comment on whether expedited procedures are necessary to the appropriate resolution of either exclusivity or good faith proceedings. We seek comment on whether there are circumstances in which the use of alternative dispute resolution services would assist in determining whether a television broadcast station negotiated in good faith as defined by section 325(b)(3)(C)(ii) and the Commission's rules adopted thereunder.

23. We also seek comment on how the burden of proof should be allocated. In this regard, we seek comment on whether the burden should rest with the complaining party until it has made a *prima facie* showing and then shift to the defending party. Under this approach, we seek comment on what would constitute a *prima facie* showing sufficient to shift the burden to the defending party.

24. Section 325(b)(3)(C) directs that the regulations adopted by the Commission prohibit exclusive carriage agreements and require good faith negotiation of retransmission consent agreements ''until January 1, 2006.'' We seek comment on whether the Commission's rules regarding exclusive carriage agreements and good faith negotiation should automatically sunset on this date. We seek comment on whether any sunset of regulations should apply to television broadcast stations negotiations with all MVPDs or solely to negotiations with satellite programming distributors. We also seek comment on what, if anything, is the Commission's role with regard to these issues after January 1, 2006.

IV. Administrative Matters

A. Initial Regulatory Flexibility Act Statement

25. The initial regulatory flexibility analysis is attached to this order as Appendix A.

B. Ex Parte Rules

26. This proceeding will be treated as a ''permit-but-disclose'' proceeding subject to the ''permit-but-disclose'' requirements under 47 CFR 1.1206(b) of the rules. 47 CFR 1.1206(b), as revised. Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making oral ex parte presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in 47 CFR 1.1206(b).

C. Filing of Comments and Reply Comments

27. Comments may be filed using the Commission's Electronic Comment Filing System (''ECFS'') or by filing

paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form<your e-mail address.'' A sample form and directions will be sent in reply.

28. Written comments by the public on the proposed information collections are due February 1, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before February 28, 2000. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Virginia Huth, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, DC 20503 or via the Internet to vhuth@omb.eop.gov.

29. Parties who choose to file by paper must file an original and four copies of each filing. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. If more than one docket or rulemaking number appears in the caption of this proceeding commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. The Cable Services Bureau contact for this proceeding is Steven Broeckaert at (202) 418–7200, TTY (202) 418–7172, or at sbroecka@fcc.gov.

30. Parties who choose to file by paper should also submit their comments on diskette. Parties should submit diskettes to Steven Broeckaert, Cable Services Bureau, 445 12th Street N.W., Room 4–A802, Washington, D.C. 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible form using MS DOS 5.0 and Microsoft Word, or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the party's name, proceeding (including the lead docket number in this case [CS Docket No. 99–363]), type of pleading (comments or reply comments), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, referable in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, 1231 20th Street, N.W., Washington, D.C. 20036.

Paperwork Reduction Act

This NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. OMB notification of action is due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–xxxx.

Title: Implementation of the Satellite Home Viewer Improvement Act of 1999: Retransmission Consent Issues.

Type of Review: New collection or revision of existing collection.

Respondents: Business or other for-profit entities.

Number of Respondents: Television broadcast licensees and MVPDs—11,588.

Estimated Time Per Response: 11.196 hours.

Total Annual Burden: 1,297,492.

Cost to Respondents: $13,000.

Needs and Uses: Congress directed the Commission to adopt regulations related to retransmission consent pursuant to the changes outlined in the Satellite Home Viewer Improvement Act of 1999. Retransmission consent is the process whereby television broadcasters negotiate and consent to carriage of their signals by MVPDs. Television broadcasters will be required to make an election and make status information available for public review. The availability of such information will serve the purpose of informing the public of the method of broadcast signal carriage.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Appendix A

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act (''RFA''), the Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on small entities by the possible policies and rules that would result from this Notice of Proposed Rulemaking (''Notice''). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided above in paragraph 31. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

2. *Need for, and Objectives of, the Proposed Rules.* Section 325(b)(3)(C), of the Communications Act of 1934, as amended (''Act''), 47 U.S.C. § 325, directed the Commission, within 45 days of enactment of the Satellite Home Viewer Improvement Act of 1999, ''to commence a rulemaking proceeding to revise the regulations governing the exercise by television broadcast stations of the right to grant retransmission consent.'' These provisions concern retransmission consent in connection with transmission of television broadcast station signals by multichannel video programming distributors (''MVPDs'').

3. *Legal Basis.* The authority for the action proposed in this rulemaking is contained in sections 1, 4(i) and (j), 325, 338, and 614 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 325, 338, and 534.

4. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The IRFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The IRFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under section 3 of the Small Business Act.

Under the Small Business Act, a small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). The rules we may adopt as a result of the Notice will affect television station licensees, cable operators, and other MVPDs.

5. *Television Stations.* The proposed rules and policies will apply to television broadcasting licensees. The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number. There were 1,509 television stations operating in the Nation in 1992. That number has remained fairly constant as indicated by the approximately 1,579 operating full power television broadcasting stations in the Nation as of May 31, 1998.

6. Thus, the proposed rules will affect many of the approximately 1,579 television stations; approximately 1,200 of those stations are considered small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

7. In addition to owners of operating television stations, any entity that seeks or desires to obtain a television broadcast license may be affected by the proposals contained in this item. The number of entities that may seek to obtain a television broadcast license is unknown. We invite comment as to such number.

8. *Small MVPDs:* SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes cable system operators, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,758 total cable and other pay television services and 1,423 had less than $11 million in revenue. We address below services individually to provide a more precise estimate of small entities.

9. *Cable Systems:* The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules emanating out of the Notice.

10. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals approximately 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total 64,000,000 subscribers and we have based our fee revenue estimates on that figure.

11. *Open Video System (''OVS''):* The Commission has certified eleven OVS operators. Of these eleven, only two are providing service. Affiliates of Residential Communications Network, Inc. (''RCN'') received approval to operate OVS systems in New York City, Boston, Washington, D.C. and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

12. *Multichannel Multipoint Distribution Service (''MMDS''):* The Commission refined the definition of ''small entity'' for the auction of MMDS as an entity that together with its affiliates has average gross annual revenues that are not more than $40 million for the proceeding three calendar years. This definition of a small entity in the context of the Commission's Report and Order concerning MMDS auctions that has been approved by the SBA.

13. The Commission completed its MMDS auction in March, 1996 for authorizations in 493 basic trading areas (''BTAs''). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MMDS is an especially competitive service, with approximately 1,573 previously authorized and proposed MMDS facilities. Information available to us indicates that no MDS facility generates revenue in excess of $11 million annually. We tentatively conclude that for purposes of this IRFA, there are approximately 1,634 small MMDS providers as defined by the SBA and the Commission's auction rules.

14. *DBS:* There are four licenses of DBS services under Part 100 of the Commission's Rules. Three of those licensees are currently operational. Two of the licensees which are operational have annual revenues which may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge that there are entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

15. *HSD:* The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

16. According to the most recently available information, there are approximately 30 program packages nationwide offering packages of scrambled programming to retail consumers. These program packages provide subscriptions to approximately 2,314,900 subscribers nationwide. This is an average of about 77,163 subscribers per program package. This is substantially smaller than the 400,000 subscribers used in the commission's definition of a small MSO. Furthermore, because this is an average, it is likely that some program packages may be substantially smaller.

17. *SMATVs:* Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December, 1995. Other estimates indicate that SMATV operators serve approximately 1.05 million

residential subscribers as of September, 1996. The ten largest SMATV operators together pass 815,740 units. If we assume that these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we tentatively conclude that a substantial number of SMATV operators qualify as small entities.

18. *Description of Projected Reporting, Recordkeeping and other Compliance Requirements.* In order to implement the Satellite Home Viewer Improvement Act of 1999, the Commission has proposed to add new rules and modify others. We have yet to determine whether to amend existing provisions of the Commission's rules, or to adopt some other regulatory framework or procedures concerning retransmission consent. There are certain compliance requirements involving the retransmission consent agreement process. Foremost is that entities most likely will have to participate in a negotiation process. There may be costs relating to the time and effort involved in discussions, in crafting, and possibly in achieving an agreement. In certain circumstances, there may be costs associated with hiring accounting or engineering personnel, as there may be instances where entities may have to provide detailed information relating to such aspects of their particular operations. Conversely, research may have to be conducted and information may have to be obtained on other entities' operations. All such data may be key to a negotiation and a retransmission consent agreement.

19. In terms of recordkeeping, entities most likely will have to keep a record of their election status and entities may be required to maintain such information within their business environment and may also have to file such information with the Commission. As discussed in the Notice, however, it is unclear what records or recordkeeping would be required of entities relating to the good faith negotiation and exclusive carriage aspects of a retransmission consent agreement. At this time, small businesses might not be impacted differently, but we seek comment on these and the above matters.

20. *Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

21. As indicated above, the Notice proposes to implement certain aspects of the Satellite Home Viewer Improvement Act of 1999. Among other things, the new legislation requires television broadcasters, until 2006, to negotiate in good faith with satellite carriers and other multichannel video programming distributors (''MVPDs'') with respect to their retransmission of the broadcasters' signals, and prohibits broadcasters from entering into exclusive retransmission agreements. This document also discusses implementing regulations relating to the exercise by television broadcast stations of the right to grant retransmission consent to satellite carriers and other MVPDs.

22. This legislation applies to small entities and large entities equally. However, in terms of the election process, in the Notice we specifically ask whether there are any statutory, regulatory, or technical differences between any of the MVPDs that would justify different election schemes. The Commission acknowledges that consideration should be given to possible differences in services. There may be established a different election process timetable or compliance requirement, and also possibly a different filing requirement, among the different MVPDs. In the Notice, however, the possible distinction in treatment was not related to the size of the entity. At this time, small entities are not treated differently and might not be impacted differently, but we seek comment.

23. *Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals.* None.

[FR Doc. 99–33764 Filed 12–28–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF43

Endangered and Threatened Wildlife and Plants; Reopening of the Comment Period on the Proposed Delisting of the Douglas County Population of the Columbian White-Tailed Deer

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provide notice of the reopening of the comment period for the proposed delisting of the Douglas County, Oregon population of the Columbian white-tailed deer (*Odocoileus virginianus leucurus*). The comment period has been reopened in order to provide the three independent peer reviewers an opportunity to review previous public comments, and any additional public comments, on the proposed rule.

DATES: Comments from all interested parties must be received by January 13, 2000.

ADDRESSES: Written comments, materials, data, and reports concerning this proposal should be sent to the Supervisor, U.S. Fish and Wildlife Service, Southwest Oregon Field Office, 2900 NW Stewart Parkway, Roseburg, Oregon 97470. Comments and materials received will be available for public inspection, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: David Peterson, at the address listed above (telephone 541/957–3474; facsimile 541/957–3475).

SUPPLEMENTARY INFORMATION:

Background

The Columbian white-tailed deer (*Odocoileus virginianus leucurus)* resembles other white-tailed deer subspecies, ranging in size from 39 to 45 kilograms (kg) (85 to 100 pounds (lbs) for females and 52 to 68 kg (115 to 150 lbs) for males. Generally a red-brown color in summer, and gray in winter, the species has white rings around the eyes and a white ring just behind the nose. Its tail is long and triangular in shape, and is brown on the dorsal (upper) surface, fringed in white, and the ventral (under) portion is white (Oregon Department of Fish and Wildlife (ODFW) 1995). The species was formerly distributed throughout the bottomlands and prairie woodlands of the lower Columbia, Willamette, and Umpqua River basins in Oregon and southern Washington (Bailey 1936). It is the westernmost representative of the 38 subspecies of white-tailed deer. Early accounts suggested this deer was locally common, particularly in riparian areas along the major rivers (Gavin 1978). The decline in deer numbers was rapid with the arrival and settlement of pioneers in the fertile river valleys. Conversion of brushy riparian land to agriculture, urbanization, uncontrolled sport and commercial hunting, and perhaps other factors apparently caused the extirpation of this deer over most of its range by the early 1900s (Gavin 1984). Only a small herd of 200 to 400 animals in the lower Columbia River area of Clatsop and Columbia Counties, Oregon, and Cowlitz and Wahkiakum Counties, Washington, and a disjunct population of unknown size in Douglas County, Oregon, survived. These two remnant populations are geographically separated by about 320 kilometers (km) (200 miles (mi)) of unsuitable or discontinuous habitat.

Population declines led to classification of this subspecies as endangered in 1967 under the Endangered Species Protection Act of 1966 (32 FR 4001). The subspecies was automatically included in the lists of threatened and endangered species when the Endangered Species Act was authorized in 1973 (16 U.S. C. 1531 *et seq.*). Prior to 1977, only the Columbia River population was listed as endangered since the Douglas County population was considered a black-tailed deer (*Odocoileus hemionus columbiana*) or a hybrid between the black-tailed deer and the Columbian white-tailed deer by the State of Oregon. In 1978, the State of Oregon recognized the white-tailed deer population in Douglas County as the Columbian white-tailed deer and prohibited hunting of white-tailed deer in that county (ODFW 1995). The Columbian White-tailed Deer Recovery Plan (Recovery Plan) was approved by us in 1976, and a revised version was approved in 1983 (Service 1983). Because of the distance between the Douglas County and Columbia River populations, and differences in habitats and threats, the Recovery Plan addresses the recovery of these two populations separately.

Crews (1939) estimated the population in the 1930s in Douglas County at 200 to 300 individuals within a range of about 78 square kilometers (sq km) (30 square miles (sq mi)). In 1970, ODFW estimated that 450 to 500 deer were present. By 1983, the number had increased to about 2,500 (Smith 1985). The population has continued to grow, and are presently estimated to be between 5,900 to 7,900 deer (ODFW 1999).

Along with this increase in numbers, the range also has expanded. The deer have expanded to the north and west in the last 10 years, and now occupy an area of approximately 800 sq km (308 sq mi) (ODFW 1995).

Most habitat for the Douglas County population is on private lands. Approximately 3,880 hectares (ha) (9,586 acres (ac)) of suitable habitat are presently considered secure on Federal, County and private lands. For the purpose of delisting, habitat is considered secure if it is protected by legally binding measures or law from adverse human activities for the foreseeable future.

The current total population size is estimated as approximately six times the population size required for downlisting, which greatly reduces the risk to the population. It is also anticipated that as habitat management and restoration activities are implemented by the Bureau of Land Management, which contains the majority of secure lands, the carrying capacity and numbers of deer on these lands will increase accordingly. The Douglas County population has met the objectives in the Recovery Plan, and greatly exceeded the habitat objectives.

We published a proposed rule to delist the Columbian white-tailed deer on May 11, 1999 (64 FR 25263). The original comment period closed on June 25, 1999. We reopened the comment period on November 3, 1999 (64 FR 59729) to conduct a peer review of the proposal, and solicited the opinions of three appropriate and independent specialists regarding the data, assumptions, and supportive information presented for the Douglas County population of Columbian white-tailed deer, per our Interagency Cooperative policy for Peer Review in Endangered Species Act Activities (59 FR 34270). We are reopening the comment period again in order to provide the three independent peer reviewers an opportunity to review previous public comments, and any additional public comments, on the proposed rule.

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U. S. Fish and Wildlife Service. 1983. Revised Columbian white-tailed deer recovery plan. Portland, Oregon. 75 pp.

Author

The primary author of this notice is Barbara Behan of the Regional Office, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–6131).

Authority

The authority of this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Thomas J. Dwyer,

Regional Director, Fish and Wildlife Service.

[FR Doc. 99–33735 Filed 12–28–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF86

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for *Ambrosia pumila* (San Diego Ambrosia) from Southern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to list *Ambrosia pumila* (San Diego ambrosia) as endangered under the Endangered Species Act of 1973, as amended (Act). This plant is restricted to San Diego and Riverside Counties, California and Baja California, Mexico, from Colonet to Lake Chapala. *Ambrosia pumila* is primarily restricted to flat or sloping grasslands, often along valley bottoms or areas adjacent to vernal pools. This species is threatened by the following; destruction, fragmentation, and degradation of habitat by recreational and commercial development; highway construction and maintenance; construction and maintenance activities associated with a utility easement; competition from non-native plants; trampling by horses and humans; off-road vehicle (ORV) use; and inadequate regulatory mechanisms. This proposed rule, if made final, would extend protection under the Act to *Ambrosia pumila.*

DATES: Comments from all interested parties must be received by February 28, 2000. Requests for public hearings must be received by February 14, 2000.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

You may submit written comments to the Deputy Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008.

You may send comments by e-mail to ambrosia__pr@fws.gov. Please submit these comments as an ASCII file and avoid the use of special characters and any form of encryption. Please also include ''Attn: [RIN number]'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Carlsbad Fish and Wildlife Office at phone number 760–431–9440.

You may hand-deliver comments to our Carlsbad office at 2730 Loker Avenue West, Carlsbad, California.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Gary D. Wallace, Botanist, at the above address (telephone 760/431–9440; facsimile 760/918–0638).

SUPPLEMENTARY INFORMATION:

Background

Ambrosia is a genus of 35 to 50 wind-pollinated species of annuals and perennials in the Asteraceae (sunflower) family. The perennial taxa range from woody shrubs to herbaceous rhizomatous (possessing underground stems) taxa. Payne (1976) notes that self-pollination and self-fertility contribute strong inbreeding, as does seed longevity. Members of the genus occur predominantly in the Western Hemisphere, especially North America. Species are generally found in arid or semiarid areas.

Ambrosia pumila (San Diego ambrosia), was originally described as *Franseria pumila* by Thomas Nuttall (Nuttall 1840) based on a specimen he collected near San Diego in 1836. Delpino (1871) transferred the species to another genus he erected based on a character of the fruit and published the combination *Hemiambrosia pumila* (Nutt.) Delpino. Asa Gray (1882), after seeing specimens of the plant with fruits, decided it was closely related to members of the genus *Ambrosia* and published the currently accepted combination, *Ambrosia pumila* (Nutt.) A. Gray. This has been recognized by current systematic and floristic treatments (Payne 1963; Munz 1935, 1974; Munz and Keck 1959; Ferris 1960; Beauchamp 1986; Payne 1993).

Ambrosia pumila is an herbaceous perennial arising from a branched system of rhizome-like roots. This rhizomatous perennial habit results in groupings of aerial stems, often termed clones, that are, or at least were at one time, all attached to one another. References to clones derive from the presence of currently separated specimens whose interconnections have degenerated leaving genetically identical but organically separate individuals. The aerial stems sprout in early spring after the winter rains and deteriorate in late summer. Therefore, the plant may not be evident from late summer to early spring. The aerial stems are 0.5 to 3 decimeter (dm) (2 to 12 inches (in)) rarely to 5 dm (20 in) tall and densely covered with short hairs. The leaves are 3 to 4 times pinnately divided into many small segments and are covered with short soft, gray-white, appressed hairs. This species is monoecious, with separate male and female flowers on the same plant, and is wind-pollinated. The male flower clusters (heads) are borne on terminal racemes, and the female flower clusters (heads) are in the axils of the leaves below the male inflorescences. The fruiting heads are enclosed by cup-like structures that have no spines, although some reports note a few vestigial spines. *Ambrosia pumila* may be distinguished from other species of *Ambrosia* in the area by its leaves which are twice divided, involucres (cup-like structures) lacking hooked spines, and lack of longer stiff hairs on the stems and leaves. This species flowers from May through October.

Several factors make it difficult to determine the extent of an individual plant. The species is rhizomatous, plants produce a few to many aerial stems each year, the rhizomatous connections among the aerial stems may deteriorate over time resulting in physically separate but genetically identical individuals, and plants may have intermingling rhizomes resulting in intermixed aerial stems that appear identical. Because this species is a clonal plant, the numbers of genetically different individuals in an occurrence, especially small occurrences, could be very low. It is possible that an occurrence that supports even 1,000 aerial stems may consist of very few plants. This suggests that the low genetic diversity within the smaller occurrences may relegate these occurrences to extinction (Barrett & Kohn 1991). Seven of the 13 extant occurrences fall into this category of reportedly supporting 1,000 or fewer aerial stems. It is also possible that even the largest reported number of aerial stems (10,000) may represent fewer than 100 plants. Some surveys have reported numbers of plants, when in fact, only numbers of aerial stems have been counted, and the actual number of separate plants is not determinable (CNDDB 1999).

Ambrosia pumila is found on upper terraces of rivers and drainages as well as in open grasslands, openings in coastal sage scrub habitat, and dry lake beds. The species may also be found in disturbed sites such as fuel breaks and roadways. Associated native plant taxa include *Distichlis spicata* (saltgrass), *Orcuttia californica* (California Orcutt grass), *Baccharis salicifolia* (Mule-fat), and *Eremocarpus setigerus* (Turkey-mullein). Populations of *Ambrosia pumila* occur on Federal, State, local government, and private lands in western San Diego County, western Riverside County, and in the northern state of Baja California, Estado de Baja California, Mexico.

This species has been reported from 49 occurrences in the United States (CNDDB 1999). Four were combined with other occurrences, six were based on misidentified specimens, and two that were based on old collections have not been documented since 1936 (CNDDB 1999). Three occurrences consist of transplanted plants from other occurrences that were subsequently partially or totally eliminated (CNDDB 1999). There are, therefore, 34 verifiable native reported occurrences of this species. Twenty of these have been extirpated since the 1930's, nearly all by commercial development and activities associated with highway construction. One occurrence, with a single stem in 1996, is considered non-viable due to the small size of the occurrence and the high level of disturbance of the site (CNDDB 1999). Subtracting this non-viable occurrence, there are currently 13 extant native occurrences of this species. Two recent occurrences (CNDDB 1999; T. Stewart, CDFG *in litt.*1999) are incorporated here into previously known occurrences. Eleven occurrences are in San Diego County, and two are in western Riverside County.

San Diego County

In San Diego County, two occurrences are protected on the Sweetwater River watershed in the recently established San Diego National Wildlife Refuge (SDNWR). One of these was reported to be 0.6 hectares (ha) (0.25 acres(ac)) in size in 1996, and 0.15 ha (0.06 ac) in 1998 (Julie Vanderwier, USFWS *in litt.*1998). Numbers of aerial stems have not been reported in the various surveys of this site. The 1998 survey indicated an unknown number of stems at this site and additionally a few plants nearby to the northeast. These few plants are included here in the earlier known occurrence. The second occurrence on the San Diego National Wildlife Refuge was reported to support 50 plants in 1996. It must be pointed out that throughout this discussion reports that include numbers of ''plants'' are, in fact, indicating only the numbers of aerial stems. It is not possible to determine the extent of a single genetically distinct plant from the numbers of aerial stems because a plant may consist of numerous aerial stems produced by interconnected underground rhizomes. These rhizomes may deteriorate over time, resulting in physically separate but genetically identical plants. A survey in 1998 (Vanderwier *in litt.*1998) reported that this site covered 0.07 ha (0.03 ac). This same survey discovered a large number of individuals just to the northeast in a 0.7-ha (1.75-ac) site, considered here as an extension of the second occurrence. Another occurrence on the Sweetwater River watershed is in El Cajon on a 0.02-ha (0.06-ac) vacant lot owned by California Department of Transportation (Caltrans) which supported 10,000 stems in 1997 (Vanderwier *in litt.*1997). In 1998 an additional occurrence was found in El Cajon on a group of vacant lots of 1.9 ha (4.8 ac) supporting 6,500 plants (aerial stems) (CNDDB 1999).

Three occurrences occur on the San Diego River watershed. The largest one is in Mission Trails Regional Park (MTRP) managed by the City of San Diego, and on adjacent private land. That portion of the occurrence on MTRP land managed by the City of San Diego occupies 13.6 ha (34 ac) and supported 1,500 stems in 1994. The adjacent private lands portion of this occurrence is afforded protections under the City of San Diego's Subarea Plan of the Multiple Species Conservation Program (MSCP) (City of San Diego 1997). The second occurrence on the San Diego River watershed and also in MTRP supports an unknown number of individuals (CNDDB 1999). Both occurrences in MTRP are afforded protected under provisions of City of San Diego's Subarea Plan (City of San Diego 1997). The third occurrence on the San Diego River watershed occurs at Gillespie Field, where there are small remnants of native populations scattered near the south side of the airfield. The current status of these remnants is unknown.

The four remaining occurrences in San Diego County may eventually be protected under provisions of the Multiple Habitats Conservation Program (MHCP) or the City of San Diego's north segment MSCP Subarea Plan. Three are small occurrences on the San Luis Rey River watershed near Bonsall—1) Some plants are presumed extant in a fenced area on Caltrans lands, and some are on private land. However, the current number of aerial stems or the area of this occurrence is not known; (2) Another occurrence in the area is 2.6 ha (6.6 ac) in size and supported about 700 plants (aerial stems) in 1996; and (3) the third occurrence on the San Luis Rey River watershed is on jointly private and Caltrans-owned lands near Bonsall and reportedly supported 2,000 to 3,000 plants (aerial stems) in 1997 (CNDDB 1999). The remaining extant occurrence in San Diego County is on the San Dieguito River watershed. The privately owned site is 31.7 ha (79.2 ac) in size and reportedly supported 2,000 stems in 1997 (CNDDB 1999). Recent site visits found fewer than 100 stems in an area less than 0.4 ha (1 ac) (Wallace *in litt.* 1999). The area is degraded and immediately adjacent to a bulldozed area of a development (Wallace *in litt.* 1999).

Riverside County

Two occurrences are known from Riverside County on privately owned lands. One occurrence along Nichols Road, Lake Elsinore supported an estimated 3,400 stems in 1997, and another occurrence at a fenced mitigation bank area at Skunk Hollow supported about 100–300 stems in 1998 (Brenda McMillan USFWS in litt.1999).

Baja California, Mexico

The current documented range of *Ambrosia pumila* in Baja California, Mexico extends from Colonet south to Lake Chapala. Two of the three documented sites were confirmed by Hogan and Burrascano (1996). Although additional occurrences may exist in Baja California, the species is not considered to be widespread because of lack of appropriate habitat and impacts from agriculture and urban development, especially near the coast.

Previous Federal Action

Federal Government action on this species began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be threatened, endangered, or extinct in the United States. This report, designated House Document No. 94–51 was presented to Congress on January 9, 1975. (*Ambrosia pumila* was not included in this document). A revision of the Smithsonian report (Ayensu and DeFilipps 1978) provided new lists based on additional data on taxonomy, geographic range, and endangered status of taxa, as well as suggestions of taxa to be included or deleted from the earlier listing. *Ambrosia pumila,* not included in the first Smithsonian report, was recommended for threatened status in the Ayensu and DeFilipps (1978) report. We published an updated Notice of Review of plants on December 15, 1980 (45 FR 82479). This notice included *Ambrosia pumila* as a category 1 candidate. Category 1 candidates were taxa for which we had sufficient information on biological vulnerability and threats to support preparation of listing proposals.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Ambrosia pumila* because the 1978 Smithsonian report (Ayensu and DeFilipps 1978) had been accepted as a petition. On October 13, 1983, we found that the petitioned listing of this species was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Notification of this finding was published in the **Federal Register** on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled annually, pursuant to section 4(b)(3)(C)(i) of the Act. On November 28, 1983, we published a supplement (48 FR 53639) to the December 15, 1980, Notice of Review of plant taxa for listing. The status of *Ambrosia pumila* was changed to category 2. Category 2 candidates were taxa for which information then in our possession indicated that proposing to list the taxa as endangered or threatened was possibly appropriate, but for which substantial data on biological vulnerability and threats were not currently known or on file to support proposed rules. The status of *Ambrosia pumila* remained unchanged through, and including, the Notice of Review we published in the **Federal Register** on September 30, 1993 (58 FR 51143). On February 28, 1996, we published in the **Federal Register** (61 FR 7595) a Notice of Review of plant and animal taxa that are candidates for listing as endangered or threatened. In that notice we announced changes to the way that we identify species that are candidates for listing under the Act, and we discontinued maintenance of a list of species that were previously identified as ''category 2 candidates.'' Thus, as a category 2 candidate, *Ambrosia pumila* was not included in the February 28, 1996, Notice of Review.

On January 9, 1997, we received a petition dated November 12, 1996, from Mr. David Hogan of the Southwest Center for Biodiversity and Ms. Cindy Burrascano of the California Native Plant Society, San Diego Chapter, requesting that *Ambrosia pumila* (San Diego ambrosia) be listed as endangered pursuant to section 4 of the Act. Additionally, the petition appealed for emergency listing pursuant to section 4(b)(7) of the Act. The petitioners further requested that critical habitat be designated for *Ambrosia pumila* concurrent with the listing pursuant to 50 CFR 424.12 and the Administrative Procedures Act 50 U.S.C. 5.53. On January 23, 1997, we notified the petitioners that we received their petition and that their petition would be processed based on the listing priority guidance then in effect.

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition presents substantial information indicating that the action may be warranted. To the maximum extent practicable, this finding should be made within 90 days of the receipt of the petition and it should be published promptly in the **Federal Register**. If we determine that listing the species may be warranted, section 4(b)(3)(B) of the Act requires us to make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. However, because of budgetary restraints, we processed petitions in accordance with the 1997 listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). This guidance identified four tiers of listing activities to be conducted by us with appropriate funds. Tier 1, the highest priority, covered emergency listings of species facing an imminent risk of extinction as defined under the emergency listing provisions of section (4)(b)(7) of the Act. Tier 2, the second priority, included processing of final determinations for species currently proposed for listing. Tier 3, the third priority, addressed efforts under the Act to resolve the conservation status of candidate species and process administrative findings on petitions to add species to the lists or reclassify threatened species to endangered status. Tier 4, the lowest priority, covered the processing of critical habitat determinations, delisting actions, and reclassification of endangered species to threatened status. Under the priority system and because of the backlog of species proposed for listing and awaiting final listing determinations at that time, we deferred action on listing petitions except where an emergency existed and where the immediacy of the threat was so great to a significant portion of the population that the routine listing process would not be sufficient to prevent large losses that might result in extinction.

We reviewed the petition and supporting documentation to determine whether *Ambrosia pumila* faced a significant risk to its well-being under the emergency listing provisions of section 4(b)(7) of the Act (61 FR 64479). On July 15, 1997, we concluded that emergency listing and the designation of critical habitat were not warranted, and that the petition should be processed as a Tier 3 priority task pursuant to the listing priority guidance for fiscal year 1997. A notice published in the **Federal Register** (62 FR 55268) on October 23, 1997, announced the extension of the fiscal year 1997 listing priority guidance until such time as the fiscal year 1998 appropriation bill for the Department of the Interior became law and new final guidance was published in the **Federal Register**. In this notice there were no changes made in the tier system.

On October 1, 1997, Southwest Center for Biodiversity and the California Native Plant Society filed a lawsuit in the United States District Court for the Southern District of California challenging our failure to produce timely administrative 90-day and 12-month findings for *Ambrosia pumila.*

On May 8, 1998, new listing priority guidance for Fiscal Years 1998 and 1999 was published in the **Federal Register** (63 FR 10931). This new guidance changed the four tier priority system to a three tier priority system. Highest priority, Tier 1, was processing emergency listing rules for any species determined to face a significant and imminent risk to its well being. Second priority, Tier 2, was processing final determinations on pending proposed listings; the processing of new proposals to add species to the lists; the processing of administrative petition findings to add species to the lists, and petitions to delist species, or reclassify listed species (petitions filed under section 4 of the Act); and a limited number of delisting and reclassifying actions. Lowest priority, Tier 3, was the processing of proposed or final critical habitat designations. Under that guidance, the administrative review process for this petition fell under Tier 2. We published a 90-day finding on the petition to list *Ambrosia pumila* as endangered in the **Federal Register** (64 FR 19108) on April 19, 1999. We found that substantial information existed indicating listing may be warranted and solicited comments and information regarding the finding. However, we did not receive any comments by May 19, 1999, the close of the comment period. On October 28, 1999, the District Court ordered us to complete a 12-month finding for *Ambrosia pumila* on or before December 10, 1999. This proposed rule constitutes the 12-month finding on the petition.

The processing of this final rule conforms with our current Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will be funded separately from other section 4 listing actions and will no longer be subject to prioritization under the Listing Priority Guidance. This final rule is a Priority 2 action and is being completed in accordance with the current Listing Priority Guidance.

Peer Review

In accordance with interagency policy published on July 1, 1994 (59 FR 34270), upon publication of this proposed rule in the **Federal Register** we will solicit expert reviews by at least three specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomic, biological, and ecological information for *Ambrosia pumila.* The purpose of such a review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including the input of appropriate experts.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR Part 424) issued to implement the listing provisions of the Act, set forth the procedures for adding species to the Federal list. We may determine that a species is endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to *Ambrosia pumila* (Nutt.) A. Gray are as follows.

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Twenty of the 34 reported native occurrences of this species have been eliminated by urbanization, recreational development and highway construction and alteration (CNDDB 1999). Of the remaining 14, one occurrence in a sidewalk crack in National City, is considered non-viable (CNDDB 1999). Six of the 13 other extant occurrences, including three of the larger (reportedly supporting more that 1,000 aerial stems) occurrences, are threatened with habitat destruction associated with highway expansion or maintenance activities or by maintenance of utility rights of way, including mowing (CNDDB 1999). One of these is west of the Bonsall Bridge and reportedly supported 2,000 to 3,000 stems in 1997 (CNDDB). The two other smaller occurrences near Bonsall are also threatened by Caltrans highway maintenance and expansion (CNDDB 1999). These are the only three extant occurrences known within the San Luis Rey watershed. Two occurrences near El Cajon within the San Diego River watershed, both reportedly supporting more that 1,000 stems, are likewise threatened by highway maintenance and highway widening (CNDDB 1999). The last occurrence threatened by highway expansion or maintenance activities or utility rights of way maintenance activities is a large (500 to 1,000 stems reported in 1998) occurrence along Nicols Road in Riverside County (CNDDB 1999). Two occurrences, both reportedly supporting more that 1,000 aerial stems have been affected by recreational development (CNDDB 1999). One of these is within a golf course under construction near Del Dios. During a recent visit, this site appeared to be significantly degraded by grading in the immediate vicinity and less than 100 aerial stems were found on the site which was less than 0.4 ha (1 ac) in size (Wallace *in litt.* 1999). The second occurrence is located within and adjacent to Mission Trails Regional Park, managed by the City of San Diego, which is required by the Multiple Species Conservation Program (MSCP) to conserve and manage 90 percent of the large population on their lands. A 10 percent loss (0.2 ha or 0.05 ac) of this major population of *Ambrosia pumila* occurred in 1997 for development of a campground facility (CNDDB 1999) and was allowed under the provisions of the City of San Diego's Subarea Plan (City of San Diego 1997). If more than a 10 percent loss occurs, the species will no longer be covered under the provisions of the MSCP (City of San Diego 1997). It will be possible to verify future losses and assess indirect effects of these losses when the biological monitoring and management aspect of the MSCP Subarea Plans are in full effect. An additional habitat loss for this species was an occurrence on the San Luis Rey watershed that supported over 1,600 ''plants'' (aerial stems). This loss occurred in spite of an existing agreement prohibiting impacts to this species (see discussion below regarding San Diego Gas and Electric under factor D). The site was graded and the plants extirpated in late 1996. Two other occurrences are threatened by residential or commercial development. The larger of the two reportedly supported 6,500 stems in 1998 (CNDDB 1999). This occurrence is on vacant lots and back yards in a residential area of El Cajon (CNDDB 1999). In Riverside County, one occurrence, near Lake Elsinore, is threatened by highway expansion activities, the other occurrence at Skunk Hollow is threatened by indirect impacts associated with urbanization surrounding the occurrence (CNDDB 1999).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not known to be a factor affecting *Ambrosia pumila* at this time. However, rare taxa are favored by some professional and amateur botanists for their collections or for trade with other individuals. The potential threat to this species from overcollection may increase upon publication of this proposed rule.

C. *Disease or predation.* Disease and predation are not known to be factors affecting this plant species.

D. *The inadequacy of existing regulatory mechanisms.* Existing regulatory mechanisms that could provide some protection for this species include—(1) Federal laws and regulations including the National Environmental Policy Act (NEPA), the Endangered Species Act in those cases where this species occurs in habitat occupied by other listed species, and section 404 of the Federal Clean Water Act; (2) State laws, including the Native Plant Protection Act (NPPA), the California Endangered Species Act (CESA), the California Environmental Quality Act (CEQA), and section 1603 of the California Fish and Game Code; (3) regional planning efforts pursuant to the California Natural Community Conservation Planning Program (NCCP); (4) land acquisition and management by Federal, State, or local agencies, or by private groups and organizations; (5) local land use processes and ordinances; and (6) enforcement of Mexican laws.

Federal Laws and Regulations

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 to 4347) requires disclosure of the environmental effects of projects within Federal jurisdiction. NEPA requires that each of the project alternatives recommend ways to protect, restore and enhance the environment and avoid and minimize any possible adverse effects when implementation poses significant adverse impacts. NEPA does not, however, require that the lead agency select an alternative with the least significant impact to the environment, nor does it prohibit implementing a proposed action in an environmentally sensitive area (40 CFR 1500 *et seq.*). Only two of the extant occurrences of *Ambrosia pumila* are on Federal lands.

The Federal Endangered Species Act (Act), as amended, may afford protection to sensitive species if they coexist with species already listed as threatened or endangered under the Act. A number of federally listed species occur within the range of *Ambrosia pumila* and are known or likely to co-occur with the species. Protection afforded by these species, however, is minimal due to the lack of significantly overlapping habitat requirements. These species include Riverside fairy shrimp (*Streptocephalus woottonii*), *Orcuttia californica* (California Orcutt grass), and Least Bell's vireo (*Vireo bellii pusillus*), listed as endangered, and the coastal California gnatcatcher (*Polioptila californica californica*), and *Navarretia fossalis* (spreading navarretia), listed as threatened. These species are not known to consistently co-occur in the same vegetation communities although they may occur in nearby associated communities.

Conservation provisions under the Clean Water Act could afford some protection to *Ambrosia pumila. Ambrosia pumila* could potentially be affected by projects requiring a permit from the Army Corps of Engineers (Corps) under section 404 of the Clean Water Act. Under section 404, the Corps regulates the discharge of fill material into waters of the United States, which includes navigable and isolated waters, headwaters, and adjacent wetlands. Section 404 regulations require that applicants obtain an individual permit for projects to place fill material affecting greater than 1.2 ha (3 ac) of waters of the United States. Nationwide Permit 26 (33 CFR part 330, revised on December 20, 1996 (61 FR 65916) was established by the Department of the Army to facilitate authorization of discharges of fill into isolated waters (including wetlands and vernal pools) that cause the loss of less than 1.2 ha (3 ac) of waters of the United States, and that cause minimal individual and cumulative environmental impacts. Projects affecting less than 0.1 ha (0.33 ac) of isolated waters require no prior approval by the Corps. In addition, other nationwide permits authorize activities that may affect *Ambrosia pumila* without prior notification to the corps. Because the distribution of this species occurs in non-wetland habitat and in habitats associated with drainages and dry lakebeds, the instances and extent of protection for this species under section 404 is unclear. However, there are no specific provisions that adequately conserve rare or candidate plant species.

Minimal impacts to the occurrences of *Ambrosia pumila* were incurred on the San Diego National Wildlife Refuge as a consequence of efforts to relocate burrowing owls onto the refuge. Throughout the relocation process, the *Ambrosia pumila* were considered, and minimal impacts were limited to an area of approximately eight square meters (9.6 square yards). Similar relocation efforts will be coordinated to avoid direct or indirect impacts to *Ambrosia pumila.* The San Diego National Wildlife Refuge currently has no specific protections in place to prevent trampling of the plant by horses and people who traverse one of the occurrences, nor is there a weed abatement plan for the *Ambrosia pumila* sites. However, future management includes abandonment of some trails and installation of trail signs to direct horses and people away from the *Ambrosia pumila* sites (Tom Roster, San Diego National Wildlife Refuge pers. comm 1999.).

State Laws and Regulation

Although State laws, including CEQA, CESA, and NPPA at times may provide a measure of protection to the species, these laws are not adequate to protect the species in all cases. For example, under CEQA where overriding social and economic considerations can be demonstrated, a project may go forward even if adverse impacts to a species are significant.

Ambrosia pumila is included on List 1B of the California Native Plant Society Inventory (Skinner and Pavlik 1994), which, in accordance with section 1901, chapter 10 of the California Department of Fish and Game Code, makes it eligible for State listing. This species is not, as yet, listed under the California Endangered Species Act.

The California Environmental Quality Act (Public Resources Code, section 21000 *et seq.*) pertains to projects on non-Federal lands and requires that a project proponent publicly disclose the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency. The lead agency is responsible for conducting a review of the project and consulting with other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to ‘‘reduce the number or restrict the range of a rare or endangered plant or animal’’ including those that are eligible for listing under the NPPA or CESA. However, as noted above, under CEQA where overriding social and economic considerations can be demonstrated, a project may go forward even where adverse impacts to a species are significant.

Regional Planning Efforts

In 1991, the State of California established the NCCP program to address conservation needs of natural ecosystems throughout the State. The focus of the current planning program is the coastal sage scrub community in Southern California, although other vegetative communities are being addressed in an ecosystem approach. *Ambrosia pumila* is a covered species under the Multiple Species Conservation Program (MSCP) in southwestern San Diego County. Based on the MSCP, we issued a Federal incidental take permit to the City of Poway in July 1996, City of San Diego in July 1997, and to the County of San Diego in March 1998. The MSCP establishes a 68,800-ha (172,000-ac) preserve and provides for monitoring and management for the 85 covered species addressed in the permit, including *Ambrosia pumila.* Additionally, *Ambrosia pumila* is defined by the MSCP as a narrow endemic. This requires that unavoidable impacts associated with reasonable use or essential public facilities must be minimized and mitigated within the MSCP planning area both inside and outside the Multiple Habitat Plan Area (MHPA).

Eight of the 11 extant occurrences in San Diego County are in the MSCP planning area. Five of the eight known occurrences in the MSCP planning area are currently afforded some level of protection within approved permitted Subarea Plans. Two of the occurrences, both at Mission Trails Regional Park (MTRP), are addressed under the approved City of San Diego's Subarea Plan (City of San Diego 1997). Under this plan, coverage for this species is dependent upon conservation of 90 percent of the only large population in the MSCP, located in and adjacent to MTRP (CNDDB 1999). Provisions of the City of San Diego's Subarea Plan require conservation of 100 percent of the portion of the occurrence on private lands adjacent to MTRP near a radio tower. The other occurrence at MTRP is also protected under provisions of the approved City of San Diego's Subarea Plan (City of San Diego 1997). The occurrence near Del Dios in the San Dieguito River watershed, is within the approved County of San Diego's Subarea Plan (County of San Diego 1997). An additional three occurrences are located within the City of El Cajon, which is in the process of preparing a subarea plan consistent with the MSCP.

Within approved Subarea Plans, four of the six occurrences are impacted due to trampling, (CNDDB 1999), and competition from non-native species affects all the occurrences. There are likely other indirect impacts from altered fire and hydrological regimes. The threat from trampling, increased competition from non-native plants and altered fire and hydrological regimes will likely be significantly reduced or eliminated when the monitoring and management program required by the MSCP and Subarea Plans is in place.

The San Diego Association of Governments Multiple Habitat Conservation Plan (MHCP) in northwestern San Diego County is still in the planning phase. It has been proposed that the only known occurrence of this species within the planning area be conserved and that the species be treated as a narrow endemic requiring surveys of suitable habitat and in situ conservation of 80–100 percent of each occurrence discovered in the area. One of the two occurrences in Riverside County is at Skunk Hollow in a fenced mitigation bank. However, this site suffered from sheep intrusion and grazing in March 1999 (Christine Moen, USFWS *in litt.*1999).

San Diego Gas and Electric owns powerline easements for some of the land at one of the occurrences on the

San Diego National Wildlife Refuge and for all of an occurrence in Oceanside. The Service, CDFG, and San Diego Gas and Electric (SDG&E) signed an implementation agreement and memorandum of understanding in December 1995 under the Natural Community Conservation Program called the San Diego Gas and Electric Subregion Plan (SDG&E Plan). Under the provisions of this plan, Ambrosia pumila is a covered species and a narrow endemic. The plan prohibits impacts to occupied habitat except in emergency situations. Contrary to the SDG&E Plan, a 1996 SDG&E project resulted in the extirpation of a relatively large occurrence at Oceanside that reportedly supported 1,600 plants (aerial stems).

The County of Riverside is preparing the Western Riverside Multiple Species Habitat Conservation Plan. *Ambrosia pumila* has been proposed for coverage under this plan but analysis of the data have not yet been completed.

Mexican Laws

We are not aware of any existing regulatory mechanisms in Mexico that would protect *Ambrosia pumila* or its habitat. Although Mexico has laws that could provide protection for rare plants, there are no specific protections for this species or vernal pools with which it is often associated. If specific protections were available and enforceable in Mexico, the portion of the range in Mexico alone, in isolation, would not be adequate to ensure long-term conservation of this species.

E. *Other natural or manmade factors affecting their continued existence.* Non-native plants threaten virtually all of the extant occurrences of *Ambrosia pumila* (CNDDB 1999, Vanderwier *in litt.* 1998). Non-native species of grasses and forbs have invaded many of Southern California's plant communities. Their presence and abundance are often an indirect result of persistent and repeated habitat disturbance from development, discing, mowing, alteration of local hydrology and the presence and maintenance of highways and trails. This species is subject to displacement by non-native species, which also likely affect the reproductive potential of this low growing wind-pollinated species (CNDDB 1999). Non-native species found with *Ambrosia pumila* include *Brassica* spp. (mustard), *Vulpia* spp. (annual fescue), *Erodium* spp. (Crane's-bill), *Bromus* spp. (brome grass), and *Foeniculum vulgare* (sweet fennel). The presence of these and other non-native plants is likely to affect (1) pollen and fruit dispersal by increasing the aerial density of plant material, (2) fire patterns by increasing the fuel volume due to the influx of larger plants, and (3) hydrological conditions by decreasing the amount of water available for *Ambrosia pumila.* The cumulative and collective effects of non-native plants pose a threat to this species which apparently has a low output of seeds. Few preserved museum specimens have fertile fruits and field collections have not provided evidence of production of significant numbers of viable seeds. This species is also threatened by altered hydrological regimes at several occurrences associated with roads, rights of way, or locations mowed for fire breaks (CNDDB 1999). A 1998 survey (Vanderwier *in litt.* 1998) reported that non-native species are common on the two occurrences in the San Diego National Wildlife Refuge and a portion of one of these occurrences is in a fuel modification zone where the plants are mowed. Several occurrences are threatened by periodic mowing which, if done in late summer or early fall, is likely to remove the flowering portions of the aerial stems and greatly reduce or eliminate the reproductive output for the year. The effects on the rhizomes by soil compaction from vehicle traffic is undocumented.

In at least one documented instance in 1999, an occurrence of *Ambrosia pumila* at Skunk Hollow, Riverside County, was grazed by sheep (Christine Moen, USFWS *in litt.* 1999). Grazing would likely eliminate or severely reduce the annual reproductive output of *Ambrosia pumila* and could also reduce the vegetative portions of the plants to a degree that would threaten their capacity to persist.

Six of the 13 extant occurrences of *Ambrosia pumila,* including four of the larger occurrences, are threatened due to the impacts of trampling by horses and people as well as ORV traffic. Two of these occurrences are on the San Diego National Wildlife Refuge (Vanderwier *in litt.* 1998, Tom Roster SDNWR pers. comm.1999). Trampling likely is a threat to any of the other accessible occurrences such as those with utility easements for maintenance purposes or access roads. The two occurrences near trails in Mission Trails Regional Park are threatened by trampling by people (City of San Diego 1999). Additional discussion of trampling may be found under Regional Planning Efforts, under factor D of this rule. The two occurrences in El Cajon are threatened by trampling by people and vehicles (CNDDB 1999).

Because *Ambrosia pumila* is a rhizomatous clonal species, a single plant may be represented by many aerial stems. An occurrence, especially some of the smaller ones, could be composed of one or only a few plants. For example, an occurrence where 500 stems had been counted could represent only 50 plants. This would likely reflect low genetic variability, which is detrimental to the long-term persistence of the species (Barrett and Kohn 1991). This condition exacerbates the other threats to all other occurrences of this species.

Transplantation of *Ambrosia pumila,* previously employed in an effort to salvage plants from native occurrences identified for extirpation, has proven to be of limited success. Transplantation protocols were generally lacking and likely did not include—meaningful guidelines for site selection, sampling methods to ensure that as many individual plants as possible are represented in the transplantation, measures of success for survival and recruitment of new seedling generations, and recourse for failure or limited success of any of these aspects of transplantation. There does not appear to be a well documented transplantation that meet the above measures. Maintenance of a few of the aerial stems for a period of time does not demonstrate that transplantation of this rhizomatous clonal perennial is an effective means for perpetuating the genetic lineages that constitute one or more of the occurrences of this species.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this taxon in determining to propose this rule. Based on this evaluation, the preferred action is to list *Ambrosia pumila* (San Diego ambrosia) as endangered. The species is threatened with extinction due to habitat alteration and destruction resulting primarily from highway and right-of-way widening and maintenance, urban development, trampling, competition from non-native plants, and vulnerability to naturally occurring events due to low numbers of individuals. Any of the threats noted above is compounded by the fact that this species is a rhizomatous, clonal, perennial that has wind-pollinated flowers and apparently rarely sets seed. The number of genetically different plants at a given site is unknown, but there may be more than 100 aerial stems per plant. This means that some of the smaller occurrences could represent a single plant. Seven of the 13 occurrences are on private lands, some of these with rights-of-way access. Although conservation measures are in place for 5 of the 13 occurrences, full protection afforded by a monitoring and management program is not yet in place. Even with full protection, this would be less than half of the known occurrences and will likely not protect sufficient numbers of genetically different plants. Also, as yet there are no known examples of transplanted or reintroduced occurrences of this species in which sexual reproduction has occurred to sustain either a viable population or exhibit the genetic diversity found in a naturally occurring population.

Critical Habitat

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection; and specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Critical habitat designation, by definition, directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Final Listing Priority Guidance for FY 1999/2000 (64 FR 57114) states, ''The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will be funded separately from other section 4 listing actions and will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 1999 and FY 2000 as allowed by our funding allocation for that year.'' As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act.

We propose that critical habitat is prudent for *Ambrosia pumila.* In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt,* 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we believe that designation of critical habitat for would be prudent for *Ambrosia pumila.*

Due to the small number of populations, *Ambrosia pumila* is vulnerable to unrestricted collection, vandalism, or other disturbance. We are concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, at this time we do not have specific evidence for *Ambrosia pumila* of taking, vandalism, collection, or trade of this species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of this species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we propose that critical habitat is prudent for *Ambrosia pumila.* However, the deferral of the critical habitat designation for *Ambrosia pumila* will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of *Ambrosia pumila* without further delay. We anticipate in FY 2000 and beyond giving higher priority to critical habitat designation, including designations deferred pursuant to the Listing Priority Guidance, such as the designation for this species, than we have in recent fiscal years.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will make the final critical habitat determination with the final listing determination for *Ambrosia pumila.* If this final critical habitat determination is that critical habitat is prudent, we will develop a proposal to designate critical habitat for *Ambrosia pumila* as soon as feasible, considering our workload priorities. Unfortunately, for the immediate future, most of Region 1's listing budget must be directed to complying with numerous court orders and settlement agreements, as well as due and overdue final listing determinations.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by

Federal, State, and private agencies, groups and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. We discuss the protection required of Federal agencies and the prohibitions against taking and harm, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal agency action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. The association of *Ambrosia pumila* with dry waterways and lakebeds may result in the Corps becoming involved through its permitting authority under section 404 of the Clean Water Act, and the issuance of permits necessary to build flood control structures associated with highway projects.

The two occurrences of *Ambrosia pumila* on the San Diego National Wildlife Refuge receive the general protection afforded biotic resources on the refuge. However, there is currently no specific management plan for this plant. The City of San Diego (1999) has prepared a draft management plan for the occurrences of *Ambrosia pumila* in Mission Trail Regional Park. This management plan has not yet been finalized.

As noted above under factor D of the ''Summary of Factors Affecting the Species'' section, eight of the occurrences in San Diego County are in the MSCP planning area, five of which are within approved Subarea Plans. According to the City of San Diego's Subarea Plan (City of San Diego 1998), 90 percent of the only major population will be conserved and 100 percent of the adjacent portion of the occurrence will be preserved. The monitoring method is to include a site-specific monitoring plan with management plans and directives to protect against detrimental edge effects (City of San Diego 1998). This Subarea Plan also treats this species as a narrow endemic requiring jurisdictions and other participants to specify measures in their subarea plans to ensure that impacts to these resources are avoided to the maximum extent possible. Under the County of San Diego's Subarea Plan, *Ambrosia pumila* is a narrow endemic requiring avoidance to the maximum extent possible. Where avoidance is infeasible, a maximum encroachment may be authorized of up to 20 percent of the population on site. Where impacts are allowed, in-kind preservation shall be required at a 1:1 to 3:1 ratio depending upon the sensitivity of the species and population size, as determined in a biological analysis approved by the Director of the Fish and Wildlife Service.

Listing *Ambrosia pumila* provides for the development and implementation of a recovery plan for the species. This plan will bring together Federal, State, and regional agency efforts for conservation of the species. A recovery plan will establish a framework for agencies to coordinate their recovery efforts. The plan will set recovery priorities and estimate the costs of the tasks necessary to accomplish the priorities. It will also describe the site specific management actions necessary to achieve conservation and survival of the species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits malicious damage or destruction on areas under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. It is anticipated that few trade permits would ever be sought or issued because this species is not common in cultivation or common in the wild. Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. For additional information concerning these permits and associated requirements, see 50 CFR 17.62. Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

It is our policy, published in the **Federal Register** (59 FR 34272) on July 1, 1994, to identify to the maximum extent practicable those activities that would or would not be likely to constitute a violation of section 9 of the Act if a species is listed. The intent of this policy is to increase public awareness of the effect of the species' listing on proposed and ongoing activities within its range. Collection of listed plants or activities that would damage or destroy listed plants on Federal lands are prohibited without a Federal endangered species permit. Such activities on non-Federal lands would constitute a violation of section 9 of the Act if they were conducted in knowing violation of California State law or regulation, or in the course of violation of California State criminal trespass law. Otherwise such activities would not constitute a violation of the Act on non-Federal lands.

Questions on whether specific activities would likely constitute a violation of section 9, should be directed to the Field Supervisor of the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Public Comments Solicited

It is our intent that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. All comments, including written and e-mail, must be received in our Carlsbad Fish and Wildlife Office by February 28, 2000. We particularly seek comments concerning:

(1) Biological, commercial, trade, or other relevant data concerning threat (or lack thereof) to *Ambrosia pumila*.

(2) The location of any additional populations of *Ambrosia pumila* and the reasons why any habitat should or should not be determined to be critical habitat for this species pursuant to section 4 of the Act.

(3) Additional information concerning the essential habitat features (biotic and abiotic), range, distribution, population size of this taxon, and information relating to the distributions of genetically distinct individuals within the population.

(4) Current or planned activities in the subject area and their possible impacts on this taxon.

Final promulgation of the regulations on *Ambrosia pumila* will take into consideration any comments and any additional information we receive during the comment period, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor of the Service's Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain any information collection requirements for which Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is required. Any information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018–0094. This rule does not alter that information collection requirement. For additional information concerning permits and associated requirements for endangered plants, see 50 CFR 17.62 and 17.63.

References Cited

A complete list of all references cited herein is available, upon request, from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author: The primary author of this proposed rule is Gary D. Wallace, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend part 17 as set forth below:

PART 17— [AMENDED]

1. The authority for citation of part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4205; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following in alphabetical order under FLOWERING PLANTS to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Ambrosia pumila	San Diego ambrosia	U.S.A. (CA) Mexico	Asteraceae	E		NA	NA
*	*	*	*	*	*	*	

Dated: December 9, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99–33781 Filed 12–28–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991221345–9345–01; I.D. 113099B]

RIN 0648–AL30

Fisheries of the Exclusive Economic Zone off Alaska; Prohibition of Nonpelagic Trawl Gear in the Bering Sea and Aleutian Islands Pollock Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 57 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This action would consist of three regulatory changes. First, it would prohibit the use of nonpelagic trawl gear in the directed pollock fisheries of the Bering Sea and Aleutian Islands (BSAI). Second, the action would revise the existing performance standard for pelagic trawl gear. Third, crab and halibut bycatch limits established for the BSAI groundfish trawl fisheries would be reduced. This action is necessary to address bycatch reduction objectives in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and is intended to further the goals and objectives of the FMP.

DATES: Comments on the proposed rule must be received at the following address by February 14, 2000.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel or faxed to (907) 586–7465. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th St., Room 453, Juneau, AK 99801. Copies of Amendment 57 to the FMP and of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action are available from NMFS at the above address or by calling the Alaska Region, NMFS, at (907)586–7228. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Nina Mollett, (907)586–7228.

SUPPLEMENTARY INFORMATION:

NMFS manages the domestic groundfish fisheries of the BSAI under the FMP. The North Pacific Fishery Mangement Council (Council) prepared the FMP under the Magnuson-Stevens Act. Regulations governing the groundfish fisheries of the BSAI appear at 50 CFR parts 600 and 679.

The Council has submitted Amendment 57 for Secretarial review. A Notice of Availability (NOA) of the FMP amendment was published on December 10, 1999 with comments on the FMP amendment invited through February 7, 2000. Written comments may address the FMP amendment, the proposed rule, or both, but must be received by February 7, 2000 to be considered in the decision to approve or disapprove the FMP amendment.

Background and Need for Action

This action is designed to comply with the Magnuson-Stevens Act, which emphasizes the importance of reducing bycatch to maintain sustainable fisheries. National Standard 9 of the Magnuson-Stevens Act mandates that conservation and management measures minimize bycatch, to the extent practicable, and minimize mortality where bycatch cannot be avoided.

More specific authority for the proposed rule is provided by paragraph 303(b)(2) of the Magnuson-Stevens Act. It states: ‘‘Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may * * * designate zones where, and periods when, fishing * * * shall be permitted only * * * with specified types and quantities of fishing gear.’’

The objective of Amendment 57, as adopted by the Council at its June 1998 meeting, is to reduce bycatch in the BSAI pollock fishery. The proposed action to implement the amendment has three parts.

1. Prohibition on Nonpelagic Trawl Gear in the BSAI Directed Pollock Fishery

Under existing regulations (§ 679.20(a)(5)(i)(B)), the Administrator of the Alaska Region, NMFS, in consultation with the Council, has authority to limit the amount of the total allowable catch (TAC) that may be taken in the directed fishery for pollock using nonpelagic trawl gear. The Administrator accomplishes this by allocating TAC for pollock between pelagic and nonpelagic trawl gear types during the annual specification process. In practice, the Council has recommended allocating TAC between gear types only twice. In 1990, the Bering Sea pollock TAC was split 88 percent for pelagic gear and 12 percent for nonpelagic trawl gear during the annual specification process. No limit was placed on nonpelagic trawl gear during subsequent years until the 1999 season, when the entire pollock TAC was allocated to pelagic gear and none to nonpelagic gear. This step was taken in anticipation of Amendment 57 being approved.

Currently, NMFS has authority to prohibit nonpelagic trawling for pollock in the BSAI under § 679.21(e)(7)(i). When a prohibited species catch (PSC) allowance, or a seasonal apportionment of the allowance, is reached in the pollock/Atka mackerel/’’other species’’ category, NMFS prohibits nonpelagic trawling for pollock either throughout the BSAI, or, depending on the PSC species, in the affected zone of the BSAI, for the remainder of the year.

The Council’s rationale for permanently prohibiting nonpelagic trawling for pollock in the BSAI, instead of relying on existing measures, is that the prohibition is expected to result in needed bycatch savings while imposing a relatively low cost on the fishery. Pollock is the only fishery where both types of trawl gear are used, and already most fishing for pollock is conducted with pelagic trawl gear, which has a substantially lower bycatch rate of halibut and crab. Although operators who use both types of gear would lose some flexibility under this rule, participants in the pollock fishery would nevertheless be able to catch the TAC.

2. Performance Standard

Existing regulations, establish a performance standard to discourage operators from fishing on the seabed with pelagic gear at times when nonpelagic trawl gear is prohibited in the BSAI. The regulations prohibit a vessel engaged in directed fishing for pollock from having 20 or more crabs of any species, with a carapace width of more than 1.5 inches (38 mm) at the widest dimension, on board at any one time. Crabs were chosen for the standard because they inhabit the seabed and, if caught with trawl gear, provide proof that a trawl has been in contact with the bottom. The proposed rule would clarify that the standard would be in effect at all times for vessels in the BSAI directed fishery for pollock, because the use of nonpelagic trawl gear would be prohibited permanently.

3. PSC Limits

The proposed rule would reduce the bycatch limit for halibut and crab caught using trawl gear in the BSAI. The CDQ program would continue to receive 7.5 percent of each PSC limit, in accordance with § 679.21(e)(1), which contains the existing limits for each PSC species in the BSAI. The current halibut PSC allowance is 3,775 mt. Crab bycatch limits vary according to abundance and spawning biomass as determined by annual surveys.

Under the proposed rule, halibut bycatch mortality would be reduced by 100 mt. The PSC allowance for red king crabs would be reduced by 3,000 animals, for *C. bairdi* crabs by 50,000 animals, and for *C. opilio* crabs by 150,000 animals. For *C. bairdi* crabs, the limit would be lowered by 20,000 in Zone 1 and by 30,000 in Zone 2, reflecting the larger fishery there.

The Council recommended these reduced PSC limits after considering data on bycatch rates from vessels using pelagic gear while the performance standard was in effect. Two other options were considered: Option 1 would have reduced only the halibut bycatch limit, and Option 2 would have reduced bycatch by lesser amounts for all four PSC species. The Council chose the proposed approach because it represents a more realistic estimate of how much bycatch would be saved by prohibiting nonpelagic trawl gear. The analysis of all options and alternatives is contained in the EA/RIR/IRFA (see ADDRESSES).

Pollock CDQ Fisheries

Under this rule, vessels fishing for CDQ pollock would be exempt from the nonpelagic trawl gear prohibition. This exemption is based on two reasons. First, the structure of the CDQ program provides a strong incentive to the CDQ groups and their harvesting partners to use fishing gear and fishing techniques that minimize the bycatch of non-target groundfish and prohibited species. Each CDQ group receives an allocation of all the groundfish TAC species. Each CDQ group is prohibited from exceeding these allocations. In accounting for the CDQ and prohibited species quota (PSQ) allocations, NMFS considers the catch by all vessels fishing for the CDQ group. Each CDQ group is each responsible for managing the catch of its CDQ and PSQ allocations so as to maximize the overall value of the CDQ fisheries. For example, if a CDQ group reaches its halibut PSQ allocation, its members must stop all CDQ fishing for the group's remaining CDQ allocations, and thus forego the value of any unharvested goundfish. This management structure provides a substantial incentive to use pelagic gear away from the bottom in the pollock CDQ fisheries. In 1998, for example, 98 percent of the total pollock CDQ was harvested using pelagic trawl gear.

The incentive to use gear that will minimize PSC while fishing for pollock would be strengthened further by the proposed rule. The CDQ program, which currently receives a 7.5 percent allocation of each PSC species, would receive a reduced allocation of PSC under the rule, because it would continue to receive a 7.5 percent allocation of what would be a reduced overall PSC allowance. Therefore, although the prohibition on nonpelagic trawl gear in itself would not apply to the CDQ fisheries, the collateral reduction in PSC allowance would increase the effect of the existing incentive for CDQ groups to minimize the bycatch of PSQ species.

Second, NMFS currently does not have a definition for directed fishing for CDQ pollock. Without such a definition, a prohibition against using nonpelagic trawl gear while directed fishing for pollock would not be enforceable in the CDQ fisheries. NMFS is developing a definition for directed fishing for pollock in the CDQ fisheries under regulations implementing Amendment 66 to the BSAI groundfish FMP. In light of that definition, NMFS may consider extending the prohibition on the use of nonpelagic trawl gear in directed fisheries for BSAI pollock to the CDQ program. Such an extension would be subject to the normal process for public review and comment.

Fishing Trip Definition

The proposed rule would change the ''fishing trip'' definition contained in § 679.2. Under the new definition, when a vessel begins fishing with a new gear type, it would be required to start recordkeeping for a new fishing trip. This change would enable, for example, a vessel legitimately fishing with nonpelagic trawl gear for yellowfin sole, and therefore under a maximum retainable bycatch restriction for pollock (see § 679.20(e)), to keep clear records if it switches to directed fishing for pollock using pelagic gear.

Classification

At this time, NMFS has not determined that the amendment this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

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

The Council and NMFS prepared an Initial Regulatory Flexibility Analysis that describes the impact this proposed rule, if adopted, would have on small entities. Analysis of catch data from 1996 and 1997 indicates that very few vessels will be adversely affected by the Council's preferred alternative to the extent of having to buy or use new gear because most vessels fishing for pollock do so mostly using pelagic gear. In 1996, five small catcher vessels used nonpelagic trawl gear only. This number was recuced to two vessels in 1997. Total pollock harvests by the few catcher vessels using only nonpelagic trawl gear averaged 85 mt per year during 1996–1997, for an ex-vessel value of $17,000, or about $5,000 per vessel per year. This amount is likely to be a very small portion (<5 percent) of the annual gross revenues for the vessels in question. The few catcher vessels that use only nonpelagic trawl gear in the BSAI pollock fishery tend to concentrate on other fisheries such as Pacific cod and flatfish. For these small vessels, pollock represents a fishery of opportunity that is sometimes targeted when other fisheries are closed, but it is not their primary source of income. In addition, none of these vessels are believed to qualify as future participants in the BSAI pollock fishery under the American Fisheries Act (AFA), which limits participation in the BSAI pollock fishery to those vessels named in the AFA or meeting certain qualifying criteria. Under the AFA, the small vessels in question, with a few possible exceptions, are excluded from BSAI pollock fishery by statute and will be unaffected by the prohibition on the use of nonpelagic trawl gear. Of the approximately 120 catcher vessels that are expected to remain in the BSAI pollock fishery under the AFA, approximately 60 are small entities, and these vessels fish for pollock predominantly with pelagic trawl gear. Some catcher processors that target on larger pollock for fillet processing use nonpelagic trawl gear for pollock under certain circumstances, and these vessels may face impacts if nonpelagic trawl gear is prohibited. However, none of the catcher processors in the pollock fishery is a small entity under the RFA.

The crab performance standard may pose some unquantifiable inconvenience to vessels with pelagic gear, as they will be forced to fish only in midwater. To the extent that they have chosen to do otherwise in the past, economic theory suggests that they have probably been gaining some economic advantage.

The reductions in overall PSC limits for halibut, red king crab, Tanner crab, and snow crab are not likely to cause significant impacts to small entities, as the proposed reductions are expected to mirror reductions in bycatch resulting from the prohibition on nonpelagic trawl gear.

The Council and NMFS considered alternative approached for meeting the Magnuson-Stevens Act's requirement to minimize bycatch that would minimize the effect on small entities. While eliminating nonpelagic trawling in all fisheries in the BSAI, or eliminating nonpelagic trawling in pollock fisheries in the Gulf of Alaska would reduce bycatch more dramatically than the proposed approach, such measures would be expected to have far more significant effects on many more small entities. The no action alternative (alternative 1 in the EA), could result in fewer economic effects on small entities depending on the Council's future recommended allocations of pollock quota. However, it is not clear that the status quo would comply with the requirements of the Magnuson-Stevens Act.

NMFS also considered a regulatory amendment to split the pollock/Atka mackerel/other species category for purposes of allocating the PSC limits among fisheries, but rejected that approach because of the potential for major economic consequences.

While eliminating nonpelagic trawling in all fisheries in the BSAI, or eliminating nonpelagic trawling in pollock fisheries in the Gulf of Alaska would reduce bycatch more dramatically than the proposed approach, such measures would be expected to have far more significant effects on many more small entities.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 22, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons discussed in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definition of ''Fishing trip'', is amended by redesignating paragraph (1)(iv) as paragraph (1)(v), removing the coordinating conjunction, ''or,'' at the end of paragraph (1)(iii), and adding paragraph (1)(iv) to read as follows:

§ 679.2 Definitions.

* * * * *

Fishing trip means:

(1) * * *

(iv) The vessel begins fishing with different type of authorized fishing gear; or

* * * * *

2. In § 679.7, paragraph (a)(14) is revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(14) *Trawl gear performance standard.* Use a vessel to participate in a directed fishery for pollock in the BSAI using trawl gear and have on board the vessel, at any particular time, 20 or more crabs of any species that have a carapace width of more than 1.5 inches (38 mm) at the widest dimension.

* * * * *

§ 679.20 [Amended]

3. In § 679.20, paragraph (a)(5)(i)(B) is removed and paragraph (a)(5)(i)(C) is redesignated as (a)(5)(i)(B).

4. In § 679.21, paragraphs (e)(1)(ii)(A) through (C), (e)(1)(iii)(A) and (B), (e)(1)(iv)(A) through (C), and (e)(1)(v) are revised to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(e) * * *

(1) * * *

(ii) * * *

(A) When the number of mature female red king crabs is at or below the threshold of 8.4 million mature crabs or the effective spawning biomass is less than or equal to 14.5 million lb (6,577 mt), the Zone 1 PSC limit will be 32,000 red king crabs.

(B) When the number of mature female red king crabs is above the threshold of 8.4 million mature crabs and the effective spawning biomass is greater than 14.5 million lb but less than 55 million lb (24,948 mt), the Zone 1 PSC limit will be 97,000 red king crabs.

(C) When the number of mature female red king crabs is above the threshold of 8.4 million mature crabs and the effective spawning biomass is equal to or greater than 55 million lb, the Zone 1 PSC limit will be 197,000 red king crabs.

(iii) * * *

(A) *Zone 1.* When the total abundance of *C. bairdi* crabs is:

(*1*) 150 million animals or less, the PSC limit will be 0.5 percent of the total abundance, minus 20,000 animals.

(*2*) Over 150 million to 270 million animals, the PSC limit will be 730,000 animals.

(*3*) Over 270 million to 400 million animals, the PSC limit will be 830,000 animals.

(*4*) Over 400 million animals, the PSC limit will be 980,000 animals.

(B) *Zone 2.* When the total abundance of *C. bairdi* crabs is:

(*1*) 175 million animals or less, the PSC limit will be 1.2 percent of the total abundance, minus 30,000 animals.

(*2*) Over 175 million to 290 million animals, the PSC limit will be 2,070,000 animals.

(*3*) Over 290 million to 400 million animals, the PSC limit will be 2,520,000 animals.

(*4*) Over 400 million animals, the PSC limit will be 2,970,000 animals.

(iv) * * *

(A) *PSC Limit.* The PSC limit will be 0.1133 percent of the total abundance, minus 150,000 *C. opilio* crabs, unless;

(B) *Minimum PSC Limit.* If 0.1133 percent multiplied by the total abundance is less than 4.5 million, then the minimum PSC limit will be 4.350 million animals; or

(C) *Maximum PSC Limit.* If 0.1133 percent multiplied by the total abundance is greater than 13 million, then the maximum PSC limit will be 12.850 million animals.

(v) *Halibut.* The PSC limit of halibut caught while conducting any trawl fishery for groundfish in the BSAI during any fishing year is an amount of halibut equivalent to 3,675 mt of halibut mortality.

* * * * *

5. In § 679.24, paragraph (b)(4) is added to read as follows:

§ 679.24 Gear limitations.

* * * * *

(b) * * *

(4) *BSAI pollock nonpelagic trawl prohibition.* No person may use nonpelagic trawl gear to engage in directed fishing for non-CDQ pollock in the BSAI.

* * * * *

[FR Doc. 99–33853 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 64, No. 249

Wednesday, December 29, 1999

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

DEPARTMENT OF AGRICULTURE

Forest Service

Louisiana Forestry Productivity Program; Determination of Primary Purpose of Certain Payments for Federal Tax Purposes

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Secretary of Agriculture has determined that all cost-share payments to individuals by the State of Louisiana under the Louisiana Forestry Productivity Program are primarily for the purpose of improving forests. This determination was made in accordance with section 126 of the Internal Revenue Code of 1954, as amended, and permits recipients of these payments to exclude them from gross income to the extent allowed by the Internal Revenue Service.

DATES: The Secretary's determination was signed on December 20, 1999.

ADDRESSES: Questions may be addressed to Paul D. Frey, Assistant Commissioner and State Forester, Louisiana Department of Agriculture and Forestry, Office of Forestry, PO Box 1628, Baton Rouge, LA 70821.

FOR FURTHER INFORMATION CONTACT: Paul D. Frey, Louisiana Department of Agriculture and Forestry, at (504) 925–4500 or Ted Beauvais, Cooperative Forestry Staff, Forest Service, USDA, at (202) 205–1389.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 126), provides that certain payments made to persons under State programs may be excluded from the recipient's gross income for Federal income tax purposes under two conditions:

(1) If the Secretary of Agriculture, based on criteria set forth in 7 CFR part 14, determines that payments are made, ''* * * primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife;'' and

(2) If it ''* * * is determined by the Secretary of the Treasury or his delegate as not increasing substantially the annual income derived from the property.''

Procedural Matters

The Secretary of Agriculture, after reviewing the authorizing legislation, regulations, and operating procedures regarding the Louisiana Forestry Productivity Program and using the criteria set forth in 7 CFR part 14, has concluded that cost-share payments made to recipients for approved practices under this program are made primarily for the purpose of improving forests.

The Secretary of Agriculture signed the ''Record of Decision, Louisiana Forestry Productivity Program, Primary Purpose Determination for Federal Tax Purposes'' on December 20, 1999, and the document is available upon request from the persons listed earlier in this notice.

Dated: December 21, 1999.

Jose Cruz,

Acting Deputy Chief, State and Private Forestry.

[FR Doc. 99–33762 Filed 12–28–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Deposting of Stockyards

Notice is hereby given, that the livestock markets named herein, originally posted on the dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer come within the definition of a stockyard under the Act and are therefore no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard	Date of posting
ND–100—Central Livestock Association, Inc., Ashley, North Dakota	July 9, 1959.
ND–103—Home Base Auction, Inc., Bowman, North Dakota	May 12, 1959.
ND–104—Central Livestock Association, Inc., Carrington, North Dakota	December 10, 1964.
ND–106—Stockmen's Livestock Exchange, Inc., Dickinson, North Dakota	May 9, 1959.
ND–110—Rocking M Livestock, LLC, Harvey, North Dakota	May 18, 1959.
ND–121—Park River Livestock Auction Market, Park River, North Dakota	June 9, 1959.
ND–124—Schilling Livestock, Inc., Turtle Lake, North Dakota	June 6, 1959.
ND–126—Watford City Livestock Auction, Watford City, North Dakota	June 1, 1959.
ND–131—Central Livestock Association, Inc., Dickinson, North Dakota	September 14, 1976.
ND–132—Litchville Feeder Pigs, Inc., Litchville, North Dakota	June 19, 1985.
SD–114—Edgemont Livestock Market, Inc., Edgemont, South Dakota	March 25, 1955.
SD–149—Timber Lake Livestock Market, Timber Lake, South Dakota	June 27, 1957.
SD–163—O'Connell's Lake Road Arena, Aberdeen, South Dakota	August 23, 1979.
SD–166—Magness-Faulkton Livestock Market, Faulkton, South Dakota	January 2, 1982.
SD–169—Alexandria Livestock Market, Inc., Alexandria, South Dakota	September 3, 1987.
WI–109—Midwest Livestock Producers Cooperative, Granton, Wisconsin	December 20, 1962.
WI–116—Midwest Livestock Producers Cooperative, Monticello, Wisconsin	May 2, 1960.
WI–117—Peshtigo Livestock Market, Inc., Peshtigo, Wisconsin	May 7, 1959.
WI–124—Midwest Livestock Producers Cooperative, Shullsburg, Wisconsin	April 15, 1971.
WI–127—Midwest Livestock Producers Cooperative, Thorp, Wisconsin	May 7, 1959.
WI–132—Midwest Livestock Producers Cooperative, Dale, Wisconsin	February 18, 1974.

This notice is in the nature of a change relieving a restriction and, thus, may be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure. This notice is given pursuant to section 302 of the Packers and Stockyards Act (7 U.S.C. 202) and is effective upon publication in the **Federal Register**.

Done at Washington, D.C., this 20th day of December 1999.

Michael J. Caughlin, Jr.,

Director, Office of Policy/Litigation Support, Packers and Stockyards Programs.

[FR Doc. 99–33841 Filed 12–28–99; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Deposting of Stockyards

Notice is hereby given, that the livestock markets named herein, originally posted on the dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer come within the definition of a stockyard under the Act and are therefore no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard	Date of posting
MN–117—Geneva Livestock Sales, Inc., Geneva, Minnesota	December 29, 1959.
MN–139—Porter Livestock Auction Market Co., Porter, Minnesota	April 6, 1966.
MN–151—Spring Grove Livestock Exchange, Spring Grove, Minnesota	October 20, 1959.
MN–158—Willmar Livestock Market, Willmar, Minnesota	September 26, 1959.
MN–159—C & C Sales, Windom, Minnesota	October 21, 1959.
MN–168—Gibbon Feeder Pig Markets, Inc., Gibbon, Minnesota	June 2, 1976.
MN–169—Minnesota Feeder Pig Markets, Inc., Willmar, Minnesota	February 28, 1977.
MN–171—Minnesota Feeder Pig Markets, Inc., Windom, Minnesota	February 5, 1979.
MN–173—Rush City Stockyard Auction, Inc., Rush City, Minnesota	June 26, 1979.
MN–174—Lee & John's Livestock, Inc., d/b/a Harmony Livestock Sales, Harmony, Minnesota	July 24, 1980.
MN–176—Minnesota Feeder Pig Markets, Inc., Elysian, Minnesota	May 23, 1981.
MN–179—Minnesota Feeder Pig Markets, Inc., Pipestone, Minnesota	May 25, 1983.
MN–180—Sauk Center Tel-O-Auction Coop., Sauk Center, Minnesota	January 28, 1985.
MN–183—Auction Center Livestock, Frazee, Minnesota	May 1, 1987.
MN–189—All Phase Arena, Inc., Spring Grove, Minnesota	June 5, 1993.

This notice is in the nature of a change relieving a restriction and, thus, May be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure. This notice is given pursuant to section 302 of the Packers and Stockyards Act (7 U.S.C. 202) and is effective upon publication in the **Federal Register**.

Done at Washington, D.C. this 20th day of December 1999.

Michael J. Caughlin, Jr.,

Director, Office of Policy/Litigation Support, Packers and Stockyards Programs.

[FR Doc. 99–33840 Filed 12–28–99; 8:45 am].

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Preliminary Results of Third New Shipper Review and Preliminary Results and Partial Rescission of Second Antidumping Duty Administrative Review

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

SUMMARY: On May 28, 1999, the Department of Commerce published notices of initiation of the third new shipper review and second administrative review of the antidumping duty order on brake rotors from the People's Republic of China. The reviews cover nine exporters of the subject merchandise to the United States. The period of review is April 1, 1998, through March 31, 1999. The Department of Commerce is also rescinding the administrative review with respect to three exporters of the subject merchandise which withdrew their requests for review in a timely manner and for which no other interested party requested a review. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Terre Keaton, Import Administration, Internation Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1766 or (202) 482–1280, 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. In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations are to 19 CFR Part 351 (1998).

SUPPLEMENTARY INFORMATION: For the nine respondents that submitted full responses to the antidumping questionnaire and have preliminarily been found to be entitled to a separate rate, we have preliminarily determined that U.S. sales have not been made below normal value (''NV''). If these preliminary results are adopted in our final results of these reviews, we will instruct the Customs Service to assess no antidumping duties on entries from the nine exporters from the People's Republic of China (''PRC'') that cooperated in these reviews (including the one new shipper reviewed) for which the importer-specific assessment rates are zero or *de minimis* (i.e., less than 0.50 percent).

Background

On April 30, 1999, the following eleven exporters requested an administrative review pursuant to section 751(a)(1) of the Act and 19 CFR 351.213(b): (1) Jilin Provincial Machinery & Equipment Import & Export Corporation (''Jilin''); (2) Laizhou Auto Brake Equipments Factory (''LABEF''); (3) Longjing Walking Tractor Works Foreign Trade Import & Export Corporation (''Longjing''); (4) Longkou Haimeng Machinery Co. (''Haimeng''); (5) Quingdao (Gren) Co. (''GREN''); (6) Yantai Chen Fu Machinery Co., Ltd. (''Chen Fu''); (7) Yantai Import & Export Corporation (''Yantai''); (8) Yantai Winhere Auto-Part Manufacturing Co. (''Winhere''); (9) Yenhere Corporation (''Yenhere''); (10) Zibo Botai Machinery Manufacturing Co. (''Zibo''); and (11) Zibo Luzhou Automobile Parts Co. (''ZLAP'').

On April 30, 1999, the Department received a timely request from Laizhou Hongda Auto Replacement Parts Co., Ltd. (''Laizhou Hongda''), Auto Replacement Parts Co., Ltd. (''Laizhou Hongda''), in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(c), for a new shipper review of this antidumping duty order.

In its April 30, 1999, request for review, Laizhou Hongda certified that it did not export the subject merchandise to the United States during the period covered by the original less-than-fair-value (''LTFV'') investigation, and that it is not affiliated with any company which exported subject merchandise to the United States during the period of investigation. Laizhou Hongda also certified that its export activities are not controlled by the central government of the PRC. Pursuant to 19 CFR 351.214(b)(2)(iv), Laizhou Hongda submitted documentation establishing the date on which the merchandise was first entered for consumption in the United States, the volume of that shipment, and the date of the first sale to an unaffiliated customer in the United States. Laizhou Hongda also agreed to waive the time limits applicable to the new shipper review and to permit the Department to conduct the new shipper review concurrently with the administrative review.

On May 20, 1998, the Department initiated an administrative review covering the eleven PRC exporters mentioned above (*see Initiation of Antidumping and Countervailing Duty Administrative Review and Request for Revocation in Part* (64 FR 28973, May, 1999)). In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d), we initiated a new shipper review covering Laizhou Hongda. *See Brake Rotors from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review,* 64 FR 28982 (May 28, 1999).

On June 8, 1999, we issued a questionnaire to each PRC company which requested a new shipper or administrative review.

On July 1, 1999, the Department provided the parties an opportunity to submit publicly available information (''PAI''), through August 16, 1999, for consideration in these preliminary results. On July 13, 1999, GREN and Jilin requested an extension of time to file their responses to the antidumping duty questionnaire. On July 14, 1999, the Department granted the extension request made by GREN and Jilin. On July 15, 1999, Chen Fu, Longjing and ZLAP withdrew their requests for review in accordance with 19 CFR 351.213(d). On July 15, and 22, 1999, the remaining nine PRC companies[1] submitted their questionnaire responses. On July 26, 1999, the petitioner[2] submitted comments on the questionnaire responses.

On August 11, 1999, the respondents requested an extension of time until August 31, 1999, to submit PAI in this proceeding. On August 12, 1999, the Department extended the time for both the respondents and the petitioner to submit PAI to August 31, 1999. On August 13, 1999, the petitioner objected to the extension arguing that the Department was denying the petitioner due process. On August 26, 1999, the Department responded to petitioner's concerns (*see* Memorandum to the File, dated August 24, 1999).

On August 31, 1999, the respondents submitted PAI for use in valuing the factors of production. The petitioner elected not to submit PAI. Instead, the practitioner requested: (1) that the Department conduct verification of all companies which submitted antidumping questionnaire responses in this proceeding; (2) that the Department conduct a verification at the Ministry of Foreign Trade and Economic Cooperation (''MOFTEC'') and Ministry of Machinery Industry (''MMI''); and (3) that the Department include in this proceeding the Department's MMI verification report, and accompanying verification exhibits, from the LTFV investigation.

On September 7, 1999, the petitioner submitted rebuttal comments on PAI. On September 10, 1999, the Department notified the petitioner by letter that the Department had rejected the petitioner's August 31, 1999, request to include in the record of this proceeding the MMI verification report or exhibits obtained in the LTFV proceeding because the information in question was not relevant to the separate rates issue of whether government control existed with respect to the export activities of the respondent companies involved in this proceeding. The Department issued supplemental questionnaires to the respondents during September 18–27, 1999. In October, November, and December 1999, the Department received supplemental questionnaire responses from the respondents.

Scope of Review

The products covered by these reviews are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under ''one ton and a half,'' and light trucks designated as ''one ton and a half.''

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the surface is not entirely smooth, and have undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer (''OEM'') which produces vehicles sold in the United States (*e.g.,* General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in these reviews are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel

[1] These nine PRC exporters are (1) Jilin; (2) LABEF; (3) Laizhou Hongda; (4) Haimeng; (5) GREN; (6) Yantai; (7) Winhere; (8) Yenhere; and (9) Zibo.

[2] The petitioner is the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers.

plate, but otherwise meet the above criteria. Excluded from the scope of the reviews are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are classifiable under subheading 8708.39.5010 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of these reviews is dispositive.

Period of Reviews

The period of review (''POR'') covers the period April 1, 1998, through March 31, 1999.

Rescission

The Department's regulations at 19 CFR 351.213(d)(1) provide that the Department may rescind an administrative review if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Chen Fu, Longjing, and ZLAP withdrew their request for an administrative review on July 15, 1999, which is within the 90-day deadline.

The Department has determined to grant the request to rescind this administrative review with respect to Chen Fu, Longjing, and ZLAP, because these companies withdrew their requests for review in a timely manner and because no other interested party requested a review of these companies. Accordingly, for POR entries made by these PRC companies, the Department will instruct the Customs Service to assess *ad valorem* duties at the rates applicable at the time of entry.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate. Of the nine respondents that submitted questionnaire responses, one of the PRC companies, Winhere, is wholly owned by private individuals. Three respondents (*i.e.,* Haimeng, Laizhou Hongda and Zibo) are joint ventures between PRC and foreign companies. Another respondent, Yenhere, is a limited liability corporation in the PRC. The four other respondents are either wholly owned by ''all the people'' (*i.e.,* Jilin and Yantai) or collectively owned (*i.e.,* GREN and LABEF). Thus, for all nine respondents, a separate rates analysis is necessary to determine whether the exporters are independent from government control (*see Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China* (''*Bicycles*'') 61 FR 56570 (April 30, 1996)).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of china,* 56 FR 20588 (may 6, 1991) and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide''*). Under this separate rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. De Jure Control

Each respondent has placed on the administrative record documents to demonstrate absence of *de jure* control, including the ''Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People,'' adopted on April 13, 1988 (''the Industrial Enterprises Law''); ''The Enterprise Legal Person Registration Administrative Regulations,'' promulgated on June 13, 1988; the 1990 ''Regulation Governing Rural Collectively-Owned Enterprises of PRC''; the 1992 ''Regulations for Transformation of Operational Mechanisms of State-Owned Industrial Enterprises'' (''Business Operation Provisions''); and the 1994 ''Foreign Trade Law of the People's Republic of China.''

As in prior cases, we have analyzed these laws and have found them to establish sufficiently an absence of *de jure* control of companies ''owned by the whole people,'' privately owned enterprises, joint ventures, stock companies including limited liability companies, and collectively owned enterprises. *See, e.g., Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China* (''*Furfuryl Alcohol*'') 60 FR 22544 (May 8, 1995), and *Preliminary Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China* 60 FR 29571 (June 5, 1995). We have no new information in this proceeding which would cause us to reconsider this determination with regard to the nine respondents mentioned above.

2. De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide* and *Furfuryl Alcohol.* Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses (*see Silicon Carbide* and *Furfuryl Alcohol*).

Each of the nine respondents asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, the respondents' questionnaire responses indicate that company-specific pricing during the POR does not suggest coordination among exporters. This information supports a preliminary finding that there is *de facto* absence of governmental control of the export functions of the respondents. *See Pure Magnesium from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Administrative Review,* 62 FR 55215 (October 23, 1997). Consequently, we have preliminarily determined that each of the respondents has met the criteria for the application of separate rates.

Fair Value Comparisons

To determine whether sales of the subject merchandise by each respondent to the United States were made at LTFV, we compared the export price (''EP'') to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below.

Export Price

We used EP methodology in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and constructed export price methodology was not otherwise indicated.

1. Haimeng, Jilin, LABEF, Winhere, Yenhere and Zibo

We calculated EP based on packed, FOB foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling in the PRC, in accordance with section 772(c) of the Act. Because foreign inland freight and foreign brokerage and handling fees were provided by NME service providers or paid for in a NME currency, we based those charges on surrogate rates from India (*see* ''Surrogate Country'' section below). To value foreign inland trucking charges, we used the average inflation-adjusted 1994 truck freight rate contained in the Indian periodical *The Times of India.* We have used this same rate in numerous NME cases in which India has been selected as the primary surrogate (*see, e.g., Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China,* 62 FR 9160, 9163 (February 28, 1997)). To value foreign brokerage and handling expenses, we relied on public information reported in the antidumping investigation of stainless steel wire rod from India (*see Brake Rotors from the People's Republic of China: Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review,* 64 FR 61581, 61584 (November 12, 1999) (*Brake Rotors First Administrative Review*)).

2. GREN and Yantai

We calculated EP based on packed, CIF, U.S. or FOB foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling in the PRC, marine insurance and international freight, in accordance with section 772(c) of the Act. As all foreign inland freight and foreign brokerage and handling fees were provided by NME service providers or paid for in a NME currency, we valued these services using the Indian surrogate values discussed above. For marine insurance, we used public information reported in the antidumping investigation of sulfur dyes, including sulfur vat dyes, from India (*see Brake Rotors First Administrative Review,* 64 FR at 61584). For ocean freight, we used a 1996 price quote (adjusted for inflation) from a U.S. shipping company to calculate an average price for shipping. We did so because GREN used NME carriers and Yantai paid freight expenses to a U.S. freight forwarder which then contracted with NME carriers to ship the subject merchandise to the United States.

3. Laizhou Hongda

We calculated EP based on packed, CIF U.S. port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling in the PRC, marine insurance and international freight, in accordance with section 772(c) of the Act. As all foreign inland freight and foreign brokerage and handling fees were provided by NME service providers or paid for in a NME currency, we valued these services using the Indian surrogate values discussed above. For marine insurance, we used public information as reported in the antidumping investigation of sulfur dyes, including sulfur vat dyes, from India (*see Brake Rotors First Administrative Review* at 64 FR 61584). To value ocean freight, we used Laizhou Hongda's reported expense because Laizhou Hongda used market-economy freight carriers (*see, e.g., Brake Rotors from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review,* 64 FR 9972, 9974 (March 1, 1999).

Normal Value

A. Non-Market Economy Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a NME country. None of the parties to this proceeding has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

B. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value a NME producer's factors of production, to the extent possible, in one or more market economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. India and Indonesia are among the countries comparable to the PRC in terms of overall economic development (*see* Memorandum from the Office of Policy to Irene Darzenta Tzafolias, dated June 24, 1999, which was included in the Department's July 1, 1999, letter sent to the interested parties in this proceeding for the submission of PAI). In addition, based on PAI placed on the record, India is a significant producer of the subject merchandise. Accordingly, we considered India the primary surrogate country for purposes of valuing the factors of production as the basis for NV because it meets the Department's criteria for surrogate country selection. Where we could not find surrogate values from India, we valued those factors using values from Indonesia.

C. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on the factors of production. We used factors reported by companies in the PRC that produced brake rotors for export to the United States during the POR through reviewed exporters. To calculate NV, the reported unit factor quantities were multiplied by publicly available Indian or Indonesia values.

In a September 7, 1999, submission, the petitioner alleged that there is widespread tax evasion in India and, therefore, insisted that the Department only subtract excise duties, levies and sales taxes from Indian domestic material prices used by the Department if the Indian brake rotor producers demonstrated that they paid their excise and sales taxes related to such materials used in production during the POR. In these preliminary results, we have not used Indian domestic prices to value the material inputs (*see* discussion below). Therefore, we do not deem it necessary to address the petitioner's allegation at this time.

In addition, the petitioner requested that the Department not deduct an amount for duty drawback from the cost of inputs used to produce brake rotors which are exported from India, based on information submitted by the respondents which indicates that Indian brake rotor exporters are entitled to duty drawback if they used imported inputs to produce the exported finished good. A ''duty drawback'' is, by definition, a remission of an amount paid (or to be paid) as an import ''duty'' (*i.e.*, tax). Such a ''drawback'' is often conditional upon exporting a certain volume of product using the imported inputs. The input prices the Department uses do not include Indian taxes because Indian government revenue-collection practices are not relevant to the question of what it would cost a PRC producer to produce the item in question, if the PRC were a market economy country. In this case, the input prices the Department is using based on the PAI specified below are already duty free. Therefore, we have not made any adjustment to these prices for duty drawback.

Finally, to calculate surrogate percentages for selling, general and administrative (''SG&A'') expenses, factory overhead and profit, the petitioner requested that the Department use financial data from a group of Indian brake rotor producers, rather than just one Indian brake rotor producer, which are more representative of the experience of the Indian brake rotor industry as a whole. We agree with the petitioner on this point, and have used financial data from five known Indian brake rotor producers to calculate these percentages (*see* discussion below).

The Department's selection of the surrogate values applied in this determination was based on the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POR and quoted in a foreign currency, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics.*

To value pig iron, we used average values based on import statistics for April 1997–March 1998 from *Monthly Statistics of the Foreign Trade of India* (''*Monthly Statistics*'') rather than domestic price data in India from the April 1996–March 1997 financial report of Lamina Foundries (''Lamina'') or from the 1996 financial report of Nagpur Alloy Castings Ltd. (''Nagpur''), because the import data was more contemporaneous with the POR. For iron scrap, steel scrap, ferrosilicon, ferromanganese, lubrication oil and limestone, we used April 1997–March 1998 average values from *Monthly Statistics.*

Certain types of rotors use steel sheet, lug bolts and ball bearing cups. To value steel sheet, we used an April 1997–March 1998 average value from *Monthly Statistics.* Because we could not obtain a product-specific price from India to value lug bolts (*see Bicycles,* 61 FR at 19026 (Comment 17)), we used January–October 1998 product-specific import data from the Indonesian government publication *Foreign Trade Statistical Bulletin.* To value ball bearing cups, we used April 1997–July 1997 import price data from *Monthly Statistics.*

To value coking coal, we used an April 1997–March 1998 import price from *Monthly Statistics* rather than a price applicable during the fourth quarter of 1996 from the International Energy Agency's *Energy Price and Taxes,* because the import price was more contemporaneous with the POR. To value firewood, we used a 1990 domestic value from the USAID publication *Marketing Opportunities for Social Forestry in Uttar Pradesh,* which is the most recent value available for this input. To value electricity, we calculated an average 1996 industrial rate based on data contained in the financial reports of Lamina, Nagpur, and Jayaswals Neco Limited (''Jayaswals''). For a complete analysis of surrogate values, see the Preliminary Results Valuation Memorandum from the Team to the File, dated December 17, 1999 (''Preliminary Results Valuation Memorandum'').

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3).

To value SG&A expenses, factory overhead and profit, we used the 1998–1999 financial data of Kalyanti Brakes Limited (''Kalyani'') combined with the financial data of Indian producers whose data is less contemporaneous with the POR (*i.e.,* the 1996–1997 financial data of Jayaswals, Krishna Engineering Works (''Krishna''), Nagpur, and Rico Auto Industries Limited (''Rico'')). We did so because we determined that it is more appropriate in this instance to calculate surrogate percentage averages which are representative of the experience of known Indian brake rotor producers, rather than to use the financial data of a sole Indian brake rotor producer just because that data is more contemporaneous with the POR as suggested by the respondents. In prior brake rotor administrative reviews, both the petitioner and the respondents have consistently submitted for the Department's consideration financial statements from multiple Indian producers of comparable merchandise which generally have been contemporaneous with the POR. Therefore, we had no reason to question the representativeness of the data being submitted. However, in this proceeding, the respondents submitted the financial statement of only one Indian producer of comparable merchandise (*i.e.,* Kalyani). Because the Department generally prefers surrogate ratios which are based on the financial data of more than a single Indian producer and are more representative of the experience of all known Indian brake rotor producers, the Department has averaged the most recent financial data available for Jayawals, Kalyani, Krishna, Nagpur and Rico to calculate the surrogate ratios for factory overhead, SG&A, and profit.

Where appropriate, we removed from the surrogate overhead and SG&A calculations the excise duty amount listed in the financial reports (*see Brake Rotors,* 62 FR at 9164). We made certain adjustments to the ratios calculated as a result of reclassifying certain expenses contained in the financial reports. In utilizing the financial data of the Indian companies, we treated the line item labeled ''stores and spares consumed'' as part of factory overhead because stores and spares are not direct materials consumed in the production progress. Based on PAL, we considered the modeling materials (*i.e.,* sand, bentonite, coal powder, steel pellets, lead powder, waste oil) to be indirect materials included in the ''stores and spares consumed'' category of the financial statements. We based our factory overhead calculation on the cost of manufacturing. We also included interest and/or financial expenses in the SG&A calculation. In addition, we only reduced interest and financial expenses by amounts for interest income if the Indian financial report noted that the income was short-term in nature. Where a company did not distinguish interest income as a line item within total ''other income,'' we used the ratio of interest income to total other income as reported for the Indian metals industry in the *Reserve Bank of India Bulletin* to calculate the interest expense amount. For example, if an Indian company's financial statement indicated that the company had miscellaneous receipt or other income under the general category ''other income,'' we applied a ratio (based on data contained in *Reserve Bank of India Bulletin*) to that miscellaneous receipts or other income figure in the financial statement to determine the amount associated with short-term interest income. To avoid double-counting, we treated the line item ''packing, freight and delivery charges'' as expenses to be valued separately. Specifically, to determine the packing expense, we used the respondents' reported packing factors.

We used the respondents' reported distances to determine the foreign inland freight expense. For a further discussion of other adjustments made, *see* the Preliminary Results Valuation Memorandum.

All inputs were shipped by truck. Therefore, to value PRC inland freight, we used the April 1994 truck rate from the *Times of India.*

In accordance with the decision of the Court of Appeals for the Federal Circuit in *Sigma Corp.* v. *United States,* 117 F. 3d 1401 (1997), we revised our methodology for calculating source-to-factory surrogate freight for those material inputs that are valued based on CIF import values in the surrogate country. Therefore, we have added to CIF surrogate values from India a surrogate freight cost using the shorter of the reported distances from either the closest PRC port of importation to the factory, or from the domestic supplier to the factory on an input-specific basis.

To value adhesive tape, corrugated cartons, nails, polyethylene material for bags, steel strap and steel strip, we used April 1997–March 1998 import values from *Monthly Statistics.* To value pallet wood, we selected an April 1995–March 1996 import value from *Monthly Statistics* rather than values obtained after March 1996, because the more contemporaneous values appeared aberrational relative to the overall value of the subject merchandise (*see* Preliminary Results Valuation Memorandum for further discussion).

Preliminary Results of the Review

We preliminarily determine that the following margins exist for the nine respondents during the period April 1, 1998, through March 31, 1999:

Manufacturer/producer/exporter	Margin percent
Jilin Provincial Machinery & Equipment Import & Export Corporation.	0.00
Laizhou Auto Brake Equipments Factory.	0.00
Laizhou Hongda Auto Replacement Parts Co., Ltd.	0.00
Longkou Haimeng Machinery Co.	0.10 (*de minimis*)
Qingdao (Gren) Co ...	0.49(*de minimis*)
Yantai Import & Export Corporation.	0.30(*de minimis*)
Yantai Winhere Auto-Part Manufacturing Co.	0.00
Yenhere Corporation	0.00
Zibo Botai Machinery Manufacturing Co.	0.00
PRC-Wide Rate	43.32

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held on March 31, 2000.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in case briefs and rebuttal briefs. Case briefs from interested parties may be submitted not later than March 24, 2000. Rebuttal briefs, limited to issues raised in the case briefs, will be due on March 29, 2000. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations and cases cited.

The Department will issue the final results of this administrative and new shipper review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. In order to estimate the entered value, we will subtract international movement expenses from the gross sales value. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries of subject merchandise during the POR for which the importer-specific assessment rate is zero or *de minimis* (*i.e.,* less than 0.50 percent). For entries of subject merchandise from those PRC companies for which the Department has rescinded the review, the Customs Service shall assess *ad valorem* duties at the rates applicable at the time of entry, as stated in the "Rescission" section of this notice. For entries subject to the PRC-wide rate, the Customs Service shall assess *ad valorem* duties at the rate established in the LTFV investigation. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review.

Cash Deposit Requirements

Upon completion of this new shipper review, for entries from Laizhou Hongda, we will require cash deposits at the rate established in the final results pursuant to section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e) and as further described below.

The following deposit requirements will be effective upon publication of the final results of these administrative and new shipper antidumping duty administrative reviews for all shipments of brake rotors from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for each reviewed company will be the rate established in the final results; (2) the cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding but for whom the Department has rescinded the review (*i.e.,* Longjing and ZLAP) will continue to be the rate assigned in that segment of the proceeding; (3) the cash deposit rate for the PRC NME entity (*i.e.,* all other exporters including Chen Fu) will continue to be 43.32 percent; and (4) the cash deposit for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative and new shipper administrative reviews and notice are in accordance with section 751(a)(1) and (2)(B) of the Act (19 U.S.C. 1675(a)(1) and (2)(B)) and 19 CFR 351.213 and 351.214.

Dated: December 21, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33665 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–804]

Final Results of Expedited Sunset Review: New Steel Rail from Canada

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

ACTION: Notice of Final Results of Expedited Sunset Review: New Steel Rail from Canada.

SUMMARY: On June 1, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on new steel rail from Canada (64 FR 29261) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and substantive comments filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: December 29, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*'') and 19 CFR part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Scope

The merchandise subject to this antidumping order is new steel rail, whether of carbon, high carbon, alloy or other quality steel from Canada. Subject merchandise includes, but is not limited to, standard rails, all main line sections (at least 30 kilograms per meter or 60 pounds per yard), heat-treated or head-hardened (premium) rails, transit rails, contact rails (or ''third rail'') and crane rails. Rails are used by the railroad industry, by rapid transit lines, by subways, in mines, and in industrial applications.

Specifically excluded from the order are light rails (less than 30 kilograms per meter or 60 pounds per yard). Also excluded from the order are relay rails, which are used rails taken up from primary railroad track and relaid in a railroad yard or on a secondary track. As a result of a changed circumstances review in 1996, the antidumping duty order on new steel rail was partially revoked with regard to 100ARA–A new steel rail, except light rail, from Canada.[1] Also, nominal 60 pounds per yard steel rail is outside the scope of this order.[2]

This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) items 7302.10.1010, 7302.10.1015, 7302.1035, 7302.10.1045, 7302.10.5020, 8548.90.0000.[3] The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

History of the Order

The Department issued its final determination of sales at less than fair value (''LTFV'') with respect to imports of new steel rail from Canada on August 3, 1989 (54 FR 31984). In this determination, the Department published one company-specific dumping margin as well as an ''all others'' rate. On September 15, 1989, the Department issued the antidumping duty order on new steel rail from Canada, again publishing one company-specific dumping margin as well as an ''all others'' rate (54 FR 38263).

Since the imposition of the order, the Department has conducted one changed circumstances administrative review.[4] There have been no administrative reviews of the order.

We note that, to date, the Department has not issued any duty absorption findings in this case. The order remains in effect for all manufacturers and exporters of the subject merchandise from Canada.

Background

On June 1, 1999, the Department initiated a sunset review of the antidumping order on new steel rail from Canada (64 FR 29261), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Pennsylvania Steel Technologies, Inc. (''PST''), a subsidiary of Bethlehem Steel Corporation, and Rocky Mountain Steel Mills (''RMSM'') (collectively, the ''domestic interested parties'') on June 16, 1999, within the deadline specified in § 351.218(d)(1)(i) of the *Sunset Regulations*. We received a complete substantive response from the domestic interested parties on July 1, 1999, within the 30-day deadline specified in the *Sunset Regulations* under § 351.218(d)(3)(i). Both PST and RMSM claimed interested party status under 19 USC 1677(9)(C) as U.S. manufacturers of the subject merchandise. In addition, PST stated that it is subsidiary of Bethlehem Steel Corporation, a petitioner in the original investigation. We did not receive a substantive response from any respondent interested party in this case. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of the order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.,* an order in effect on January 1, 1995). On October 12, 1999, the Department determined that the sunset review of the antidumping duty order on new steel rail from Canada is extraordinarily complicated, and extended the time limit for completion of the final results of this review until not later than

[1] *See New Rail, Except Light Rail, From Canada; Final Results of Changed Circumstances Antidumping and Countervailing Duty Administrative Reviews, and Revocation in Part of Antidumping and Countervailing Duty Orders,* 61 FR 11607 (March 21, 1996).

[2] *See New Steel Rail, Except Light Rail, From Canada, Notice of Termination of Changed Circumstances Administrative Reviews and Clarification of Scope Language,* 63 FR 43137 (August 12, 1998).

[3] Per conversation with April Avalone at U.S. Customs on September 7, 1999.

[4] *See* footnote 1.

December 28, 1999, in accordance with section 751(c)(5)(B) of the Act.[5]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission (''the Commission'') the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, domestic interested parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumpung order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of the order would be likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In this instant review, the Department did not receive a substantive response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations,* this constitutes a waiver of participation.

In their substantive response, the domestic interested parties argue that revocation of the order on new steel rail from Canada would be likely to lead to continuation or recurrence of dumping. They maintain that were the order revoked, imports of new steel rail from Canada would likely reenter the U.S. market at less than fair value. They point out that although Algoma Steel Corporation, Limited, has ceased producing new steel rail, another Canadian producer, the Sydney Steel Corporation (''Sysco''), does produce the subject merchandise. The domestic interested parties argue that new steel rail currently accounts for approximately 40 percent of Sysco's total steel production (*see* July 1, 1999, substantive response of the domestic interested parties at 9–10 and Exhibit 2). Moreover, they argue that Sysco's five year business plan calls for an increase in rail production and an increase in exports to account for some of the production increase. The domestic interested parties assert that several factors indicate that, if the antidumping duty order were revoked, the primary target of Sysco's increased production of new steel rail would be the United States market. Specifically, the domestic parties argue that, because Sysco maintains a location in Eastern Canada, its most economical and logical export market would be the United States. Additionally, the domestic interested parties stress that statements made by Sysco executives indicate a willingness to regain market share in the U.S. (*see id.* at 10 and Exhibits 3 and 5).

The domestic interested parties also base their likelihood argument on the decline in import volumes following the imposition of the order. The domestic interested parties, citing U.S. Census Bureau statistics, state that subject imports dropped off significantly in 1990, the year following the imposition of the order. They argue that prior to the issuance of the order, sales of Canadian new steel rail had increased by 162 percent between the time period 1986 to 1988. The domestic interested parties further assert that subsequent to the antidumping order, sales volumes dropped by over 99.9 percent in 1990, as compared to 1988 figures. Moreover, in 1998, imports were 99.7 percent lower than in 1988. They conclude that Canadian imports, while not zero, are currently insignificant in the U.S. market (*see id.* at 8–9). Therefore, the domestic interested parties argue that were the order revoked, dumping would be likely to recur since the evidence indicates that Canadian exporters of the subject merchandise need to dump in order to sell at pre-order levels.

In conclusion, the domestic interested parties argue that the Department should determine that there is a likelihood that dumping would continue or recur were the order revoked because the imposition of the order resulted in the near termination of imports of new steel rail from Canada.

As discussed in section II.A.3 of the *Sunset Policy Bulletin,* the SAA at 890, and the House Report at 63–64, if companies continue to dump with the discipline of the order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. As discussed above, no administrative reviews have been conducted since the original investigation, and therefore dumping margins above *de minimis* continue to exist for all shipments of the subject merchandise from Canada. While the domestic interested parties note that Algoma no longer produces the subject merchandise, other Canadian producers/exporters, such as Sysco, continue to produce and export the subject merchandise.

Consistent with section 752(c) of the Act, the Department also considers the volume of imports before and after the issuance of the order. As stated above, the domestic interested parties argue that a significant decline in the volume of imports of the subject merchandise from Canada since the imposition of the order provides further evidence that dumping would continue if the order were revoked. In their substantive responses, the domestic interested parties provide statistics demonstrating the decline in import volumes of new steel rail since the imposition of the order (*see* July 1, 1999, Substantive Response of the domestic interested parties at 8 and Exhibit 1). Utilizing the Department's statistics, including IM146 reports, on imports of the subject merchandise from Canada, we agree with the domestic interested parties' assertions that imports of the subject merchandise declined sharply following the imposition of the order and have not regained pre-order volumes. However, it

[5] *See Extension of Time Limit for Final Results of Five-Year Reviews,* 64 FR 55233 (October 12, 1999).

is not possible to determine whether this decline is due to the fact that Algoma has ceased producing new steel rail or to the response of Sysco and other producers/exporters to the order. Therefore, the decline in imports in this case is not probative of the likelihood of continuation or recurrence of dumping.

As noted above, in conducting its sunset reviews, the Department considers the weighted-average dumping margins and volume of imports when determining whether revocation of an antidumping duty order would lead to the continuation or recurrence of dumping. Based on this analysis, the Department finds that the existence of dumping margins above *de minimis* is highly probative of the likelihood of continuation or recurrence of dumping. Therefore, given that dumping has continued over the life of the order, respondent parties waived participation in this review, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue or recur if the order were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin,* the Department stated that it normally will provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the ''all others'' rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin.*) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin.*)

In their substantive response, the domestic interested parties recommend that the Department adhere to its general practice of selecting dumping margins from the original investigation. Regarding companies not reviewed in the original investigation, the domestic interested parties suggest that the Department report to the Commission the all others rate published in the original investigation. Since the Algoma Steel Corporation, the company that received a company-specific rate in the original investigation, has, according to the domestic interested parties, ceased production of new steel rail, the domestic parties maintain that providing a rate for Algoma is not necessary. However, because at least one other producer/exporter remains, the domestic interested parties recommend that the Department provide to the Commission the all others rate determined in the original investigation.

The Department agrees with the domestic interested parties that the margins calculated in the original investigation are the only rates that reflect the behavior of exporters without the discipline of the order. Absent argument and evidence to the contrary, the Department finds the margins calculated in the original investigation are probative of the behavior of Canadian producers/exporters of new steel rail if the order were revoked. As such, the Department will report to the Commission the ''all others'' rates from the original investigation as contained in the *Final Results of Review* section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the margin listed below:

Manufacturer/exporter	Margin (percent)
Algoma	38.79
All Others	38.79

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 21, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33664 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Notice of Completion of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the final remand determination made by the U.S. International Trade Administration, in the matter of Brass Sheet and Strip from Canada, Secretariat File No. USA/CAN–98–1904–03.

SUMMARY: Pursuant to the Order of the Binational Panel dated November 5, 1999, affirming the final remand determination described above was completed on December 16, 1999.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On November 5, 1999, the Binational Panel issued an order which affirmed the final remand determination of the United States International Trade Administration (''ITA'') concerning Brass Sheet and Strip from Canada. The Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no request for an Extraordinary Challenge was filed. No such request was filed. Therefore, on the basis of the Panel Order and Rule 80 of the Article 1904 Panel Rules, the Panel Review was completed and the panelists discharged from their duties effective December 17, 1999.

Dated: December 22, 1999.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 99–33785 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–GT–U

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: North American Free Trade Agreement, NAFTA Secretariat, United

States Section, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of termination of panel review of the final countervailing duty determination made by the International Trade Administration, respecting live cattle from Canada (Secretariat File No. USA–CDA–99–1904–06).

SUMMARY: Pursuant to the Consent Motion to Terminate the Panel Review, the panel review is terminated as of December 22, 1999. No complaints were filed pursuant to Rule 39, no Notices of Appearance were filed pursuant to Rule 40, and no panel has been appointed. Pursuant to Rule 73(2) of the *Rules of Procedure for Article 1904 Binational Panel Review,* this panel review is terminated.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, NW, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panel. When a request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: December 22, 1999.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 99–33784 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

Evaluation of National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Sapelo Island (Georgia) National Estuarine Research Reserve.

The evaluation will be conducted pursuant to Sections 315 and 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended, and regulations at 15 C.F.R. Part 921, Subpart E, and Part 923, Subpart L. The CZMA requires a continuing review of the performance of states with respect to coastal program and research reserve program implementation. Evaluation of National Estuarine Research Reserves require findings concerning the extent to which a state has met the national objectives, adhered to the Reserve's final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA. The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. A public meeting will be held as part of the site visit.

Notice is hereby given of the date of the site visit for the listed evaluation, and the date, local time, and location of the public meeting during the site visit.

The Sapelo Island National Estuarine Research Reserve site visit will be from January 31–February 4, 2000. One public meeting will be held on Thursday, February 3, 2000, at 7 p.m., in the Sapelo Island Visitors Center, on Dock Landing Road, Meridian, Georgia.

The State will issue notice of the public meeting in a local newspaper at least 45 days prior to the public meeting, and will issue other timely notice as appropriate.

Copies of the State's most recent performance report, as well as OCRM's notification and supplemental request letter to the State, are available upon request from OCRM. Written comments from interested parties regarding the Reserve are encouraged and will be accepted until 15 days after the date of the public meeting. Please direct written comments to Margo E. Jackson, Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland, 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Margo E. Jackson, Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, (301) 713–3155, Extension 114.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: December 22, 1999.

CAPT Ted Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 99–33745 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112699C]

Gulf of Mexico Fishery Management Council; Public Meetings; Correction

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

ACTION: Correction of public meeting notice.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings on January 18–21, 1999. The meeting agendas were published in the **Federal Register** on December 6, 1999. There are some corrections to that notice.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: The original notice of these meetings was published in the **Federal Register** on December 6, 1999 (64 FR 68086). This document corrects and makes changes to the meeting agendas.

Under ''Council'' the following changes are to be made:

January 21

9:30 a.m. - 10:00 a.m.—Receive the Reef Fish Management Committee Report.

10:30 a.m. - 11:00 a.m.—Receive the Migratory Species Management Committee Report.

11:00 a.m. - 11:15 a.m.—Receive the South Atlantic Fishery Management Council Liaison Report.

11:15 a.m. - 11:30 a.m.—Receive Enforcement Reports.

Under ''Committees'' the following changes are to be made:

January 18

1:00 p.m. - 3:00 p.m.—Convene the Reef Fish Committee to review red snapper management issues and develop recommendations.

3:00 p.m.- 4:30 p.m.—-Convene the Migratory Species Management Committee to consider a NMFS proposal for an area closed to pelagic longline fishing.

All other previously published information remains unchanged.

Although non-emergency issues not contained in the agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see FOR FURTHER INFORMATION CONTACT) by January 10, 2000.

Dated: December 23, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–33811 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF INTERIOR

U.S. Fish and Wildlife Service

[I.D. 110299C]

Marine Mammals; File No. 932–1489–01

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce. U.S. Fish and Wildlife Service (FWS), Interior.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that the Marine Mammal Health and Stranding and Response Program (MMHSRP), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, has been issued an amendment to scientific research and enhancement Permit No. 932–1489–01.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment: See SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson 301/713–2289.

SUPPLEMENTARY INFORMATION: On March 25, 1999, notice was published in the **Federal Register** (64 FR 14435) that a request for a scientific research and enhancement permit to take all species in the Orders Cetacea, Pinnipedia, Sirena, and polar bear, sea otter and marine otter had been submitted by the above-named organization. The permit was issued July 2, 1999 (64 FR 37933) 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 parts 217–227), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*) to only take species of the Orders Cetacea and Pinnipedia (except walrus). The Permit is amended to include species of Order Sirenia and polar bear, sea and marine otters. The amendment is issued under authority of the above citations and the MMPA (16 U.S.C. 1361 et seq), applicable regulations (50 CFR part 18), ESA (16 U.S.C. 1531 et seq), and applicable regulations (50 CFR part 17).

Issuance of this permit, 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.

Documents may be reviewed in the following locations:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221);

Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930–9250 (978/281–9250);

Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, bldg. 1, Seattle, WA 98115–0070;

Southeast Region, National Marine Fisheries Service, NOAA, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (727/570–5301);

Southwest Region, National Marine fisheries Service, NOAA, 501 west Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001);

Coordinator, Pacific Area Office, National Marine Fisheries Service, NOAA 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/943–1221);

U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Arlington, VA 22203 (1–800–358–2104);

Field Supervisor, Jacksonville Field Office, 6620 South Point Drive South, Suite 310, Jacksonville, FL 32216–0312 [904–232–2580, Fax: 904–232–2404);

Field Supervisor, Ventura Field Office, 2493 Portola Road, Suite B, Ventura, CA 93003 [805–644–1766, Fax: 805–644–3958]; and

Marine Mammals Management, 1101 E. Tudor Road, Anchorage, AK 99503–6199 [907–786–3800, Fax: 907–786–3816).

Dated: December 20, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: December 20, 1999.

Kristen Nelson,

Acting Chief, Branch of Permits, Office of Management Authority, U.S. Fish and Wildlife Service.

[FR Doc. 99–33855 Filed 12–28–99; 8:45 am]

BILLING CODES 3510–22–F, 4310–55–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120999G]

National Plan of Action for the Reduction of Incidental Catch of Seabirds in Longline Fisheries

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

ACTION: Notice of availability; schedule change; public meeting; request for comments.

SUMMARY: The United States, through a collaborative effort of NMFS and the U.S. Fish & Wildlife Service (FWS), announces the availability of a draft National Plan of Action for the Reduction of Incidental Catch of Seabirds in Longline Fisheries (NPOA-Seabirds). The United States, through

NMFS, also announces a schedule change for the NPOA-Seabirds. NMFS will host a public meeting to receive comments from members of the public on the draft NPOA-Seabirds. To accommodate people unable to attend a meeting or wishing to provide written comments, NMFS solicits written comments on the NPOA-Seabirds.

DATES: A public hearing on the NPOA-Seabirds will be held at 3:00 p.m. on January 19, 2000. Submit comments on the NPOA-Seabirds to the appropriate address or fax number by 5:00 p.m. on January 18, 2000.

ADDRESSES: The public meeting will be held at NOAA-NMFS Headquarters, 1315 East-West Highway, SSMC3 Room 14836, Silver Spring, MD 20910. Comments on the NPOA-Seabirds may be sent to David Kerstetter, NOAA-NMFS/SF4, 1315 East-West Highway, Silver Spring, MD 20910, or by fax to 301–713–2313. Comments will not be accepted via e-mail or internet.

FOR FURTHER INFORMATION CONTACT: David Kerstetter, 301–713–2276, ext. 107, or fax 301–713–2313.

SUPPLEMENTARY INFORMATION: The United States, through a collaborative effort of NMFS and the FWS, is developing a NPOA-Seabirds pursuant to the endorsement of the International Plan of Action for the Reduction of Incidental Catch of Seabirds in Longline Fisheries by the Food and Agriculture Organization of the United Nations Committee on Fisheries (COFI) Meeting in February 1999. The United States has committed itself to developing this NPOA-Seabirds and reporting to COFI on its implementation no later than 2001.

A previous **Federal Register** document dated September 8, 1999 (64 FR 48987), provided a tentative time frame for the completion of this project and an outline of the contents of the NPOA-Seabirds. The time frame has been revised as provided here, and the structure of the NPOA-Seabirds, but not the content, has been changed. Public comments received regarding this September 8, 1999, document will be addressed in the notice of availability of the final NPOA-Seabirds.

Time Frame:

NPOA-Seabirds

December 27, 1999: Release draft NPOA-Seabirds for public comment via posting of the document on the NMFS web site (www.nmfs.gov). The document will also be provided in hard copy upon request (see **ADDRESSES**).

January 2000: Public comment period on draft NPOA-Seabirds.

January 19, 2000: Public meeting on NPOA-Seabirds.

February 2000: Release final NPOA-Seabirds via a Federal Register notice of availability and posting on the NMFS web site (www.nmfs.gov). The document will also be provided in hard copy upon request (see **ADDRESSES**).

Special Accommodations

The public meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to David Kerstetter (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the meeting.

Dated: December 22, 1999.

Gary C. Matlock,

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

[FR Doc. 99–33856 Filed 12–29–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Tuesday, January 18, 2000.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Cox, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advise to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. 92–463, as amended, (5 u.S.C. App. sec. 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1004), and that accordingly, this meeting will be closed to the public.

Dated: December 22, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–33692 Filed 12–28–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Change in Meeting Date of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a change to a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, January 20, 2000.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for acquisition and Technology, to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Defense Advanced Research Projects Agency and the Military departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. sec. 10(d) (1994)), it has been determined that this advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1944), and that accordingly, this meeting will be closed to the public.

Dated: December 22, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–33693 Filed 12–28–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group C (Electro-Optics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, February 24, 2000.

ADDRESSES: The meeting will be held at Palisades Institutes for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. sec. 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: December 22, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–33694 Filed 12–28–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wednesday, January 19, 2000.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Eliot Cohen, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments proposed to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. sec. 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: December 22, 1999.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–33695 Filed 12–28–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the President's Security Policy Advisory Board Action Notice

Summary: The President's Security Policy Advisory Board has been established pursuant to Presidential Decision Directive/NSC–29, which was signed by President on September 16, 1994.

The Board advises the President on proposed legislative initiatives and executive orders pertaining to U.S. security policy, procedures and practices as developed by the U.S. Security Policy Board, and functions as a federal advisory committee in accordance with the provisions of Pub. L. 92–463, the ''Federal Advisory Committee Act.''

The President has appointed from the private sector, three of five Board members each with a prominent background and expertise related to security policy matters. General Larry Welch, USAF (Ret.) chairs the Board. Other members include: Rear Admiral Thomas Brooks, USN (Ret.) and Ms. Nina Stewart.

The next meeting of the Advisory Board will be held on 10 January 2000 at 1400hrs at the Rand Corporation, 1700 Main Street, Santa Monica, CA. 90407–2318. The meeting will be open to the public.

For further information please contact Mr. Bill Isaacs telephone: 703–602–0815.

Dated: December 22, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–33696 Filed 12–28–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Air Force Space Launch Facilities will meet in closed session on February 24, 2000, Patrick Air Force Base, Cape Canaveral, FL, and March 24, 2000, at The Aerospace Corporation, Chantilly, VA.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense Science Task Force on Air Force Space Launch Facilities will assess the anticipated military, civil and commercial space launch requirements and estimate future funding requirements for space launch ranges capable of meeting both national security needs and civil and commercial needs. The Task Force will discuss interim findings and tentative recommendations resulting from ongoing activities.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these Defense Science Board meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: December 22, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–33697 Filed 12–28–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Inspector General

Privacy Act of 1974; System of Records

AGENCY: Office of the Inspector General, DoD.

ACTION: Notice to amend a record system.

SUMMARY: The Office of the Inspector General, DoD proposes to amend a system of records in its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The action will be effective on January 28, 2000, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Acting Chief, Administrative Service, Assistant Inspector General for Administration, Information Management, 400 Army Navy Drive, Room 410, Arlington, VA 22202-2884.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph E. Caucci at telephone (703) 604-9786.

SUPPLEMENTARY INFORMATION: The Office of the Inspector General's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendment is not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety.

Dated: December 22, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

CIG-15

SYSTEM NAME:

Special Inquiries Investigative Case File and Control System *(February 22, 1993, 58 FR 10213).*

CHANGES:

*   *   *   *   *

SYSTEM NAME:

Delete entry and replace with 'Departmental Inquiries Case System'.

*   *   *   *   *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete first paragraph and replace with 'Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.'

*   *   *   *   *

CIG-15

SYSTEM NAME:

Departmental Inquiries Case System.

SYSTEM LOCATION:

Office of the Assistant Inspector General for Departmental Inquiries, Office of the Inspector General, Department of Defense, 400 Army Navy Drive, Arlington, VA 22202-2884.

CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM:

Individuals who provide initial complaints resulting in administrative investigations conducted by Office of the Assistant Inspector General for Departmental Inquiries (OAIG-DI) related to violations of laws, rules, or regulations or mismanagement, gross waste of funds, abuse of authority, or a danger to the public health and safety; subjects of administrative investigations conducted by the OAIG-DI; or individuals identified as having been adversely affected by matters under investigation by the OAIG-DI.

CATEGORIES OF RECORDS IN THE SYSTEM:

Materials relating to allegations received and documentation created as a result of action by the Office of the Inspector General, including reports, records of action taken, and supporting documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978 (Pub. L. 95-452), as amended; and DoD Directive 5106.1 (32 CFR part 376).

PURPOSE(S):

To record complaints, allegations of wrongdoing, and requests for assistance; to document inquiries, research facts and circumstances, sources of information, conclusions and recommendations; to record actions taken and notifications of interested parties and agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS, AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the OIG's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated and paper records are stored in conventional media file folders and personal computer.

RETRIEVABILITY:

Automated and paper records pertaining to administrative investigation cases are indexed through the use of a computerized cross-reference system; they may be retrieved by individual names or case numbers.

SAFEGUARDS:

Records, both paper and automated, are accessible only to Office of the Assistant Inspector General for Departmental Inquiries personnel having official need therefor and are stored in locked rooms. The automated system is password protected, and regular back-ups of data are performed.

RETENTION AND DISPOSAL:

Automated and paper records are retained for a period of ten years following completion of final action.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Assistant Inspector General for Departmental Inquiries, Office of the Inspector General, Department of Defense, 400 Army Navy Drive, Arlington, VA 22202-2884.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief, Freedom of Information Act/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202-2884.

The request should contain the individual's full name, address, and Social Security Number. Requests submitted on behalf of other persons must include their written authorization. Provision of the Social Security Number is voluntary and it will be used solely for identification purposes. Failure to provide the Social Security Number will not affect the individual's rights.

RECORDS ACCESS PROCEDURES:

Individuals may access agency records or information about themselves should address written inquiries to the Chief, Freedom of Information Act/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202-2884.

The request should contain the individual's full name, address, and Social Security Number. Requests submitted on behalf of other persons must include their written authorization. Provision of the Social Security Number is voluntary and it will be used solely for identification purposes. Failure to provide the Social Security Number will not affect the individual's rights.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information was obtained from sources, subjects, witnesses, all levels of government, private businesses, and nonprofit organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 312. For additional information contact the system manager.

[FR Doc. 99–33698 Filed 12–28–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army

Reserve Officer's Training Corps (ROTC) Program Subcommittees; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., App. 2), announcement is made of the following Committee meeting:

Name of Committee: Reserve Officers's Training Corps (ROTC) Program Subcommittee.

Date of Meeting: 6–8 February 2000.

Place: Pentagon, Washington, DC.

Time: 0800–1700 hours.

Proposed Agenda: Review and discuss status of Army ROTC since the July 1999 meeting held in Louisville , KY.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee. For further information, contact: Commander U.S. Army Cadet Command, ATTN: ATCC–TT (MAJ Hewitt), Fort Monroe, VA 23651; (757) 728–5456.

C. Paul Whitaker

Colonel, GS., Acting Chief of Staff.

[FR Doc. 99–33409 Filed 12–28–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Rio de Flag Flood Control Study Environmental Impact Statement

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Extension of comment period.

SUMMARY: Notice of Availability for the Rio de Flag Flood Control Study Draft Environmental Impact Statement was published in the **Federal Register**, Volume 64, No. 223 on November 19, 1999. The public comment is scheduled to conclude on January 4, 2000. However, in response to requests received from the public, the comment period will be extended two weeks and comments will be due on January 18, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. David Compas, (213) 452–3850.

SUPPLEMENTARY INFORMATION: None.

Mary V. Yonts,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 99–33769 Filed 12–28–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by December 30, 1999. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before February 28, 2000.

ADDRESSES: Written comments regarding the emergency review 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 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (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 Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. 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. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: December 22, 1999.

William E. Burrow, Leader,

Information Management Group, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: Extension.

Title: National Student Loan Data System (NSLDS).

Abstract: The U.S. Department of Education will collect data from postsecondary schools and guaranty agencies about federal Perkins loans, federal family education loans, and William D. Ford direct student loans to be used to determine eligibility for Title IV student financial aid.

Additional Information: Organizational circumstances necessitate the Office of Student Financial Assistance to request a three-month extension on the present OMB clearance.

Frequency: On Occasion, Weekly, Monthly, Quarterly

Affected Public: Not-for-profit institutions; Individuals or households; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 29,952.

Burden Hours: 179,712.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov, or should be faxed to 202–708–9346.

Written comments or questions regarding burden and/or the collection activity requirements, contact Joseph Schubart at (202) 708–9266 or via his internet address Joe_Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–33691 Filed 12–28–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, and William D. Ford Federal Direct Loan Programs; Correction

AGENCY: Office of Student Financial Assistance, Department of Education.

ACTION: Notice of revision of the Federal need analysis methodology for the 2000–2001 award year; Correction.

SUMMARY: On June 1, 1999, a notice was published in the **Federal Register** (64 FR 29512–29515, FR Doc. 99–13767) to update the Federal need analysis methodology for the 2000–2001 award year. This notice corrects the June 1 document.

Page 29512 is corrected as follows:

(1) Column one, "Summary", line 13, "educational" should be "education".

(2) Column three, line 23, replace "two-earner" with "two wage earner" and "one-earner" with "one wage earner".

(3) Table one, "Income Protection Allowance", line 1 following the table, "$2,940" should be "$2,980" and line 2, "$2,090" should be "$2,120".

(4) Item 2, "Adjusted Net Worth (NW) of a Business or Farm", continued to column two, line 1, "anther" should be "another".

(5) Table two, "Adjusted Net Worth (NW) of a Business or Farm", second column heading "new worth" should be "net worth".

Page 29513 is corrected as follows:

(1) Item 3, "Education Savings and Asset Protection Allowance", line 5, "educational expenses" should be "education expenses".

(2) Column three, "Independent Students With Dependents Other Than A Spouse—continued", column three, line two of the table, "18,00" should be "18,000".

(3) Column three, "Assessment Schedules and Rates", line 7, "educational" should be "education".

(4) Column three, "Assessment Schedules and Rates", line 11, "parents" should be "parents' ".

(5) Column one, heading under "Dependent Students", "parents" should be "parent".

Page 29514 is corrected as follows:

(1) Column one, "Employment Expense Allowance", line 10, replace "two-earner" with "two wage earner" and "one-earner" with "one wage earner".

(2) Column three, "Allowance for State and Other Taxes", line 1, "students" should be "student's".

FOR FURTHER INFORMATION CONTACT: Ms. Edith Bell, Program Specialist, U.S. Department of Education, Room 3053, ROB–3, 400 Maryland Avenue, SW, Washington, D.C. 20202–5400. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape or computer diskette) on request to the contact person listed in the preceding paragraph.

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(Catalog of Federal Domestic Assistance Numbers: 84.063 Federal Pell Grant Program; 84.038 Federal Perkins Loan Program; 84.033 Federal Work-Study Program; 84.007 Federal Supplemental Educational Opportunity Grant; 84.032 Federal Family Education Loan Program; and 84.268 William D. Ford Federal Direct Loan Program)

Dated: December 21, 1999.

Greg Woods,

Chief Operating Officer, Office of Student Financial Assistance.

[FR Doc. 99–33763 Filed 12–28–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Education.

ACTION: Notice-Computer Matching between the U.S. Department of Education and the Social Security Administration.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of l988, Pub.L. 100–503, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, a notice is hereby given of the computer matching program between the U.S. Department of Education (ED) (the recipient agency), and the Social Security Administration (SSA) (the source agency). The following notice represents the approval of a new computer matching agreement by the SSA and ED Data Integrity Boards to implement the matching program on the effective date as indicated below.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub.L. 100–503), the Office of Management and Budget (OMB) Final Guidelines on the Conduct of Matching Programs (see 54 FR 25818, June 19, 1989), and OMB Circular A–130, we are providing the following information:

1. Names of Participating Agencies

The U.S. Department of Education and the Social Security Administration.

2. Purpose of Match

ED is one of several Federal agencies to operate benefit programs that have statutory requirements to reduce, suspend, or terminate benefits to those who are incarcerated. Sections 484(a)(5)(20 U.S.C. 1091) and 401(b)(8)(20 U.S.C. 1070a) of the Higher Education Act of 1965, as amended (HEA) provide that an incarcerated student is ineligible for loans under the Title IV student financial assistance programs and that students incarcerated in any Federal or State penal institution are ineligible for Federal Pell Grant assistance. The SSA, with the assistance of the Federal Bureau of Prisons and various State and local entities developed a database of persons who are incarcerated. On April 25, 1998, the White House directed ED to coordinate its efforts to enforce the requirements of sections 484(a)(5)(20 U.S.C. 1091) and 401(b)(8)(20 U.S.C. 1070a) of the HEA with SSA by accessing SSA's prisoner database. This computer matching program will provide an efficient and comprehensive method of identifying incarcerated applicants who are ineligible to received student financial assistance under the Title IV programs.

3. Legal Authority for Conducting the Matching Program

ED is authorized to participate in the matching program under Title IV section 484(a)(5)(20 U.S.C. 1091) and 401(b)(8)(20 U.S.C. 1071a) of the HEA. SSA is authorized to participate in the matching program under 42 U.S.C. 1382(e)(1)(I)(ii).

4. Categories of Records and Individuals Covered by the Match

ED will submit for verification from its Central Processing System files (Federal Student Aid Application File (18–11–01)) the social security number (SSN) and other identifying information for each applicant for Title IV student financial assistance. This information will be matched against the SSA State Verification and Exchange System, which contains the SSN and other identifying information for all SSN holders.

5. Effective Dates of the Matching Program

The matching program will become effective 40 days after a copy of the agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and OMB (or later if OMB objects to some or all of the agreement), or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months thereafter, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

6. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program or obtain additional information about the program including a copy of the computer matching agreement between ED and SSA should contact Ms. Edith Bell, Program Specialist, U.S. Department of Education, Room 3053, ROB–3, 400 Maryland Avenue, SW, Washington, DC 20202–5400. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

You may inspect all public comments about this matching program at Regional Office Building 3, 7th and D Streets, SW, Room 3045, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape or computer diskette) on request to the contact person listed.

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Dated: December 21, 1999.

Jeanne VanVlandren,

Acting Chief Operating Officer, Office of Student Financial Assistance.

[FR Doc. 99–33744 Filed 12–28–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments on the proposed three-year extension of existing Form DOE–887, ''Department of Energy Customer Surveys.''

DATES: Written comments must be submitted on or before February 28, 2000. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Herbert T. Miller, Statistics and Methods Group, EI–70, Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Alternatively, Mr. Miller may be reached by phone at 202–426–1103, by e-mail at hmiller@eia.doe.gov, or by FAX 202–426–1081.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 *et seq.*) and the Department of Energy Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 *et seq.*), require the Energy Information Administration (EIA) to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) of the collections under Section 3507(h) of the Paperwork Reduction Act of 1995.

On September 11, 1993, the President signed Executive Order No. 12862 aimed at ''* * * ensuring the Federal government provides the highest quality service possible to the American people.'' The voluntary surveys the Department proposes will be used to ascertain customer satisfaction with the Department of Energy in terms of services, products, and information our customers want and expect, as well as their satisfaction with and awareness of existing products, services, and information. Respondents will be businesses, academic institutions, associations, researchers, and other individuals, organizations, or institutions that are the recipients of the Department's services, products, and information. Previous customer surveys have provided useful information to the Department for assessing how well services, products, and information are delivered and for making improvements. The results are used internally and summaries are provided to the Office of Management and Budget on an annual basis, and are used to satisfy the requirements and the spirit of Executive Order No. 12862.

II. Current Actions

The request to OMB will be for a three-year extension of the expiration date of approval for DOE to conduct customer surveys. During the past approval period of about three years, 14 customer surveys have been conducted by telephone, mail, and through the Web site. (Examples of previously conducted customer surveys are available upon request.) Our planned activities in the next three fiscal years reflect our increased emphasis on and expansion of these activities, including an increased use of electronic means for obtaining customer input. Surveys may be conducted by focus groups, reply cards that accompany product distribution, web-based surveys that offer customers the opportunity to express their levels of satisfaction with DOE products, services, and information, and for on-going dialogue with the Department. DOE will collect this information by electronic means, as well as by mail, fax, telephone, and person-to-person. Steps will be taken to assure anonymity of respondents in each activity covered under this request.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues

A. Are the proposed collections of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a potential respondent:

A. Public reporting burden for this collection is estimated to average .25 hours per response (8,333 respondents per year × 15 minutes per response = 2,083 hours annually). The response time varies from two minutes to four hours depending upon the complexity of the information collection. The estimated burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose and provide the information. Please comment on the accuracy of the estimate.

B. The agency estimates that the only costs to the respondents are for the time it will take them to complete the collection of information. Please comment if respondents will incur start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with this information collection?

C. What additional actions could be taken to minimize the burden of this collection of information? Such actions my involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

D. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a potential user:

A. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, D.C., December 22, 1999.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 99–33822 Filed 12–28–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice Inviting Financial Assistance Applications

AGENCY: U.S. Department of Energy (DOE), National Energy Technology Laboratory (NETL).

ACTION: Notice inviting financial assistance applications.

SUMMARY: The Department of Energy announces that it intends to conduct a competitive Program Solicitation and award financial assistance (Cooperative Agreements) for the program entitled ‘‘Testing and Evaluation of Promising Mercury Control Technologies for Coal Based Power Systems’’. Through this solicitation, DOE seeks to support applications in the following areas of interest: (1) Field Testing of Activated Carbon Upstream of Existing Utility Particulate Control Devices, (2) Field Testing of Effective Mercury Control Technologies Upstream of and Across Wet Flue Gas Desulfurization Systems, (3) Field Testing of Concepts for Augmenting or Aiding in the Overall Control of Mercury in the Field Tests under Topic 1 and Topic 2, and (4) Testing Novel and Less Mature Control Technologies on Actual Flue Gas at the Pilot-scale. A DOE technical panel will perform a scientific and engineering evaluation of each responsive application to determine the merit of the approach, and availability of DOE funding in the technical areas proposed. Awards will be made to a limited number of applicants based on this review.

FOR FURTHER INFORMATION CONTACT: Martin J. Byrnes, U.S. Department of Energy, National Energy Technology Laboratory, Acquisition and Assistance Division, P.O. Box 10940, MS 921–112, Pittsburgh PA 15236–0940, Telephone: (412) 386–4486, FAX: (412) 386–6137, E-mail: byrnes@netl.doe.gov.

This solicitation (available in both WordPerfect 6.1 and Portable Document Format (PDF)) will be released on DOE's NETL Internet site (http:/www.netl.doe.gov/business/solicit) on or about January 28, 2000.

SUPPLEMENTARY INFORMATION:

Title of Solicitation: ‘‘Testing and Evaluation of Promising Mercury Control Technologies for Coal Based Power Systems.’’

Objectives: The mission of the DOE Mercury Measurement and Control Program is to perform research and development in order to provide a better understanding of mercury and its speciation for coal-based power generation activities. The Department of Energy's Mercury Measurement and Control Program goal is to develop control strategies for reducing the current annual utility mercury emissions by 50 to 70% by 2005 and by 90% by 2010 at a cost between one-quarter to one-half of the current cost estimates. Research continues on developing potential technologies for mercury emission reduction from utility plants, and is designed to augment existing pre- and post-combustion technologies, with investigations studying different combustion conditions for possible mercury removal or mercury speciation modifications. The post-combustion R&D focuses on the addition of some type of sorbent technology (including gas-phase additives) to adsorb the mercury, or using new technology for mercury control.

The primary objective of this solicitation is to solicit applications for work that seek cost-shared projects (1) to conduct field testing of promising mercury control technologies to determine their maximum removal of measured mercury levels (total i.e., elemental plus oxidized) while determining realistic process/equipment costs for various levels of Hg removed; and (2) to further develop the less mature methods for possible control of mercury emissions from coal-fired power plants. A secondary focus of this solicitation is to measure and/or assess potential multiple pollutant or co-control associated with the control technology field test and development projects designed to elucidate mercury emission reductions. The key element addressed in the solicitation's overall areas of interest is the control of mercury and its species generated by U.S. coal-fired utility boiler systems.

Intent: The Department of Energy's intent under this solicitation is to gather cost and performance data by field testing of promising mercury control technologies, and smaller pilot-scale investigations to determine: (1) The potential mercury removal or efficiency of promising mercury control technologies at a larger scale; (2) the portion of the very diverse utility industry that these mercury control technologies could penetrate or be retrofittable allowing high end mercury removal; (3) the possible negative and positive impacts of retrofitting these mercury control technologies; (4) accurate cost(s) of retrofitting these technologies; (5) the highest amount of Hg removed at the lowest cost per pound; and (6) effective sequestration of the captured mercury in the various media utilized as by-products or being disposed in landfills.

Eligibility: Eligibility for participation in this Program Solicitation is considered to be full and open. All interested parties may apply. The solicitation will contain a complete description of the technical and organizational evaluation factors and the relative importance of each factor. While national laboratories may not participate as a prime they may participate as a sub-contractor.

Areas of Interest: The Department expects to support applications in the following areas of interest: (1) Field Testing of Activated Carbon Upstream of Existing Utility Particulate Control Devices, (2) Field Testing of Effective Mercury Control Technologies Upstream of and Across Wet Flue Gas Desulfurization Systems, (3) Field Testing of Concepts for Augmenting or Aiding in the Overall Control of Mercury in the Field Tests under Topic 1 and Topic 2, and (4) Testing Novel and Less Mature Control Technologies on Actual Flue Gas at the Pilot-scale.

Awards: DOE anticipates issuing financial assistance (cooperative agreements) for each project selected. DOE reserves the right to support or not support, with or without discussions, any or all applications received in whole or in part, and to determine how many awards may be made through the solicitation subject to the funds available. DOE expects to provide a total of $7.4 million for projects under Topic 1; a total of $2.0 million for projects under Topic 2; a total of $0.775 million for projects under Topics 3; and a total of $2.0 million for projects under Topic 4. The period of performance for all projects is expected to be within three years, with projects associated with Topics 1 through 4 being initiated at different times over the three year period. This is dependent on the number of awards and the availability of the independent contractor performing the sampling and analyses of mercury for all the field tests. The minimum cost shares are twenty (20) percent and fifty (50) percent, depending on criteria described in the draft solicitation.

Solicitation Release Date: A draft of this Program Solicitation is available for comment on FETC's World Wide Web Server Internet System at *http://www.netl.doe.gov/business/solicit* until January 14, 2000. The final Program Solicitation is expected to be ready for release on or about January 28, 2000. Applications must be prepared and submitted in accordance with the instructions and forms contained in the Program Solicitation.

Richard D. Rogus,

Contracting Officer, Acquisition and Assistance Division.

[FR Doc. 99–33828 Filed 12–28–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management (EM) Site-Specific Advisory Board (SSAB), Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Saturday, January 15, 2000: 8:30 a.m.–12:30 p.m.

ADDRESS: The Plantation, 9660 Dry Fork Road, Harrison, Ohio

FOR FURTHER INFORMATION CONTACT: Doug Sarno, Phoenix Environmental, 6186 Old Franconia Road, Alexandria, VA 22310, at (513) 648–6478

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

8:30 a.m.—Call to order
8:30–8:45 a.m.—Chair's Remarks and Announcements
8:45–9:00 a.m.—Year 2000 Activities and Priorities
9–10 a.m.—Silos Recommendation Discussion and Approval
10–10 a.m. Status of Fernald Remediation Programs
10:30–10:45 a.m.—Break
10:45–11:45 a.m.—Presentation on DOE Stewardship Activities
11:45–12 p.m.—Review of Stewardship Path Forward
12–12:15 p.m.—Public Comment
12:15–12:30 p.m.—Presentation of Core Values Award
12:30 p.m.—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, C/O Phoenix Environmental Corporation, MS 76, Post Office Box 538704, Cincinnati, Ohio 45253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC on December 22, 1999.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–33824 Filed 12–28–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Sandia

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM–SSAB), Kirtland Area Office (Sandia).

DATE: Wednesday, January 19, 2000: 6 p.m.–9 p.m. (MST).

ADDRESS: John Marshall Center for Family and Community Services, 1500 Walter Street, SE, Albuquerque, NM 87102, (505) 848–1324.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, MS–0184, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

6–6:15 p.m.—Check In/Minutes/Agenda Approval
6:15–7 p.m.—Class II Permit Modifications
7–7:15 p.m.—Public Comment
7:15–7:30 p.m.—Form Task Group for Class II Permit Modifications
7:30–7:45 p.m.—Break
7:45–8:15 p.m.—Overview of Upcoming Six Months and Form Task Group for Stewardship
8:15–8:30 p.m.—Form Existing Task Groups and Introduction of Potential New Members and Vote
8:30–8:45 p.m.—Task Group Reports and Coordinating Council Status
8:45–9 p.m.—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, MS–0184, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on December 22, 1999.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–33827 Filed 12–28–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Study on Long-Term Stewardship Activities and Issues; Extension of Scoping Period

AGENCY: Department of Energy (DOE).

ACTION: Extension of scoping period for study on long-term stewardship.

NOTICE: Notice of extension of scoping period for national study on long-term stewardship.

SUMMARY: The Department of Energy (DOE) is preparing a national study on long-term stewardship focusing on the institutional and programmatic issues facing the Department as it completes the environmental cleanup program at sites. This study is being prepared pursuant to the terms of a settlement agreement that resolved a lawsuit brought against DOE by the Natural Resources Defense Council and 38 other plaintiffs [*Natural Resources Defense Council, et al.* v. *Richardson, et al.,* Civ. No. 97–936 (SS) (D.D.C. Dec. 12, 1998)]. On October 6, 1999 (64 FR 54279), the Department published a notice in the **Federal Register** stating its intent to prepare a national study on long-term stewardship of DOE sites. Public comment is being sought pursuant to the terms of the settlement agreement, to provide DOE with input on priority issued that will be most useful to address in the study. In response to public comment, the Department is extending the formal scoping period for the national study on long-term stewardship and invites the general public, other Federal agencies, Native American Tribes, state and local governments, and all other interested parties to comment on the scope of the study.

DATES: The formal scoping period for the national study on long-term stewardship is extended from January 4, 2000 to February 3, 2000.

ADDRESSES: Scoping comments may be submitted in writing to: Steven Livingstone, Project Manager, U.S. Department of Energy, PO Box 45079, Washington, DC 20026–5079; or electronically at www.em.doe.gov/lts or to Steven.Livingstone@em.doe.gov; or by fax at 202-586–4314.

FOR FURTHER INFORMATION CONTACT: James D. Werner, Program Director, or Steven Livingstone, Project Manager, Office of Long-Term Stewardship (EM–51), Office of Environmental Management, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585–0119, phone: 202–586–9280, fax: 202–586–4314.

Signed in Washington DC, this 22nd day of December, 1999.

James D. Werner,

Director, Office of Long-term Stewardship, Office of Environmental Management.

[FR Doc. 99–33821 Filed 12–28–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–30–002]

ANR Pipeline Company; Notice of Filing

December 22, 1999.

Take notice that on December 13, 1999, in compliance with the Commission's November 23, 1999 order, ANR Pipeline Company, (ANR) tendered for filing supplemental information, pursuant to Section 154.202 of the Commission's regulations, in support of ANR's proposed new hourly flow transportation services under Rate Schedules FTS–3 and ITS–3.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be file on or before December 29, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33709 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–206–005]

Atlanta Gas Light Company; Notice of Technical Conference

December 22, 1999.

Take notice that a technical conference will be held on Wednesday, January 19, 2000, at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33706 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–032]

Columbia Gas Transmission Corporation; Notice of Filing

December 22, 1999.

Take notice that on December 15, 1999, Columbia Gas Transmission Corporation (Columbia) tendered a filing pursuant to Article III, Section F, Sharing of Gains or Losses on Disposition of Gathering and Products Extraction Facilities, of Stipulation II in Docket No. RP95–408, et al., approved by the Commission on April 17, 1997 (79 FERC 61,044 (1997)). In accordance with this provision, Columbia is required to share with its customers the gain or loss on the sale of certain gathering and products extraction facilities to exceed the Sharing Threshold by $1.496 million.

Columbia states further that copies of this filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the

Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33703 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–033]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 22, 1999.

Take notice that on December 17, 1999, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective January 1, 2000:

Forty-first Revised Sheet No. 25
Forty-first Revised Sheet No. 26
Forty-first Revised Sheet No. 27
Eighteenth Revised Sheet No. 30A

Columbia states that this filing is being submitted pursuant to Stipulation I, Article I, Section E, True-up Mechanism, of the Settlement (Settlement) in Docket No. RP95-408 et al., approved by the Commission on April 17, 1997 (79 FERC 61,044 (61,044)). Under the approved section of the Settlement, Columbia is required to true-up its collections pursuant to the Settlement Component for 12-month periods commencing November 1, 1996 and ending October 31, 2004. The third 12-month period (Period III) ended October 31, 1999.

Columbia states that it is making this true-up filing in compliance with the Settlement to return a net over-recovered amount of $1,691,326 for Period III, which include interest and the true-up of the Period II Settlement Component adjustment, through an adjustment to the Settlement Component of the base rates for the Period January 1, 2000 through October 31, 2000.

Columbia states further that copies of this filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33704 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–55–000]

Distrigas of Massachusetts Corporation; Notice of Application

December 22, 1999.

Take notice that on December 15, 1999, Distrigas of Massachusetts Corporation (DOMAC), 75 State Street, 12th Floor, Boston, Massachusetts 02109, filed in Docket No. CP00–55–000 an application pursuant to Section 7(c) of the Natural Gas Act and Part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations for a certificate of public convenience and necessity authorizing DOMAC to install, operate, and maintain certain facilities at its Everett, Massachusetts LNG Plant in order to provide services between its LNG Plant and an electric power generating plant (Power Project) to be constructed on a site adjacent to the LNG Plant, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the Internet at http://www.ferc.fed.us./online/rims.htm (call 202–208–2222 for assistance).

Specifically, DOMAC seeks authorization to install, operate, and maintain: (1) A hot and cold water thermal energy transfer system between the LNG Plant and the Power Project, (2) replacement vaporization equipment necessary to integrate the thermal energy transfer system into the LNG Plant's existing operations, and (3) certain minor LNG Plant modifications necessary to meter and connect the Power Project's fuel supply line to the LNG Plant. The Power Project is under development by Cabot Power Corporation, an affiliate of DOMAC, and will be constructed on a site owned by MASSGAS, INC. (another affiliate of DOMAC) adjacent to the LNG Plant. The total cost of the proposed facilities is estimated to be $11 million. DOMAC requests that the Commission issue final certificate authorization by June 30, 2000.

DOMAC explains that it wishes to construct the proposed facilities in order to establish a mutually beneficial thermal energy exchange arrangement between its LNG Plant and the Power Project. DOMAC will supply regasifield LNG to the Power Project. Waste heat from the Power Project will be authorized by DOMAC to increase the efficiency of its LNG Plant and the Power Project will utilize chilled water returned from the LNG Plant to increase its efficiency.

DOMAC states that the proposed project is designed to preserve existing LNG Plant capabilities and will not degrade any services DOMAC provides to existing customers. In addition, DOMAC lists as benefits that the proposed project will provide: improved reliability; improved operational safety; improved air quality; as well as reduced operating costs for DOMAC which will benefit the competitive Northeast energy market. DOMAC also states that, since it will bear all costs of the proposed facilities and will assume the full economic risk of the investment, the proposed project will not affect the rates paid by existing or future customers.

Any question regarding this amendment should be directed to Robert A. Nailling, Senior Counsel, Distrigas of Massachusetts Corporation, 75 State Street, 12th Floor, Boston, Massachusetts 02109, at (617) 526–8300.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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 of 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 commenters 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 a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that 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 DOMAC to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33718 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–10–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 22, 1999.

Take notice that on December 15, 1999, El Paso Natural Gas Company (El Paso) tendered for filing two Transportation Service Agreements (TSAs), one for firm service and the other for interruptible service, between El Paso and Odessa-Ector Power Partners, L.P. (Odessa-Ector) and Sixteenth Revised Sheet No. 1 to its FERC Gas Tariff, Second Revised Volume No. 1–A.

El Paso states that it is submitting the TSAs for Commission approval since the TSAs contains provisions which differ from El Paso's Volume No. 1–A Tariff. The tariff sheet, which references the TSAs, is proposed to become effective on January 15, 2000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33700 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–61–001]

Equitrans, L.P.; Notice of Refund Report

December 22, 1999.

Take notice that on December 17, 1999, Equitrans, L.P. tendered for filing a status report on the progress of resolving the issues raised by Columbia Gas of Pennsylvania, Inc. (CPA) on applying the Gas Research Institute (GRI) demand surcharge to individual storage-related transactions.

Equitrans states that it has resolved the issue with CPA and GRI by issuing refunds to the affected customers who paid the demand surcharge during 1994 through 1999.

Any person desiring to protest said 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 December 29, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33720 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–142–000]

Florida Gas Transmission Company; Notice of Filing of Report of Cash-Out Activity

December 22, 1999.

Take notice that on December 16, 1999, Florida Gas Transmission Company (FGT) tendered for filing schedules detailing certain information related to the Cash-Out mechanism from October 1, 1997 through September 30, 1998. No tariff changes are proposed therein.

FGT states that section 19.1 of the General Terms and Conditions (GTC) of its FERC Gas Tariff provides for an Annual Report containing an accounting for costs and revenues associated with the Cash Out Mechanism, Fuel Recovery Mechanism and various Balancing Tools provided for in FGT's Tariff. FGT states the Instant filing is made in compliance with those provisions.

FGT states that there was a net revenue balance for the current Settlement Period of $329,576 and a cumulative underrecovery of $69,426 of system balancing costs.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 30, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33712 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–205–005]

Granite State Gas Transmission, Inc.; Notice of Filing

December 22, 1999.

Take notice that on December 15, 1999, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed below for effectiveness on January 15, 2000:

First Revised Sheet No. 336
First Revised Sheet No. 337
First Revised Sheet No. 338

Granite State states that the purpose of this filing is: (1) to submit its final report to the Commission reflecting a true-up of all Portland Pipe Line lease-related costs billed to Granite State and all revenues collected pursuant to Granite State's Portland Pipe Line surcharge; and (2) to delete all tariff language relating to the Portland Pipe Line lease. According to Granite State, copies of the filing have been mailed to all affected customers and applicable state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33705 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–140–000]

Granite State Gas Transmission, Inc.; Notice of Tariff Filing

December 22, 1999.

Take notice that on December 15, 1999, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed below for effectiveness on January 1, 2000:

Sub Twenty-Second Revised Sheet No. 21
Sub Twenty-Third Revised Sheet No. 22
Fourteenth Revised Sheet No. 23

Granite State states that the purpose of this filing is to revise its rates to reflect the Year 2000 Gas Research Institute Surcharges. According to Granite State, copies of the filing have been mailed to all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33711 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP97–315–000, CP97–315–001. CP97–320–000, CP97–321–000, CP97–319–000, CP98–200–000, and CP98–540–000 (Not Consolidated)]

Independence Pipeline Company, ANR Pipeline Company, National Fuel Gas Supply Corporation, and Transcontinental Gas Pipe Line Corporation; Errata (December 22, 1999), Interim Order

Issued December 17, 1999.

On December 17, 1999, the Commission issued an Interim Order in the above-docketed proceedings (89 FERC 61,283). The following changes should be noted.

(1) On page 103, Appendix A, delete Certificate Condition number 14.

(2) On page 100, add Ordering Paragraph (G) to read as follows: Independence, Transco and ANR each shall immediately designate an ombudsman to address promptly any complaints from landowners regarding trespassing or objectionable land acquisition techniques, as set out in the body of this order.

(3) On page 101, formally Ordering Paragraph (G) becomes Ordering Paragraph (H).

David P. Boergers,

Secretary.

[FR Doc. 99–33748 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–105–001]

K N Interstate Gas Transmission Co.; Notice of Tariff Filing

December 22, 1999.

Take notice that on December 15, 1999, K N Interstate Gas Transmission Co. (KNI) tendered for filing as part of its FERC Gas Tariff, the following revised tariff sheet, to be effective January 1, 2000:

Third Revised Volume No. 1–A

Substitute Ninth Revised Sheet No. 4D

First Revised Volume No. 1–C

Substitute Fourteenth Revised Sheet No. 4

KNI states that this filing corrects an inadvertent error made during the submission of the annual GRI filing, approved by the Commission in Docket No. RP99–323–000. KNI proposes an effective date of January 1. 2000, in accordance with the Letter Order dated September 29, 1999 in the above referenced Docket.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33710 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–143–000]

K N Interstate Gas Transmission Co.; Notice of Tariff Filing

December 22, 1999.

Take notice that on December 16, 1999, K N Interstate Gas Transmission Co. (KNI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, the following revised tariff sheet, to be effective January 1, 2000.

Tenth Revised Sheet No. 4D

KNI states that this filing contains revised mainline transmission and storage fuel and loss reimbursement percentages, pursuant to KNI's Offer of Settlement and Stipulation and Agreement in Docket Nos. RP98–117, *et al.* KNI proposes an effective date of January 1, 2000, for the reduced fuel and loss reimbursement percentages reflected in the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33713 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–21–002]

Northern Border Pipeline Company; Notice of Amendment

December 22, 1999.

Take notice that on December 17, 1999, Northern Border Pipeline Company (Northern Border), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed is Docket No. CP99–21–002, an amendment to its application in Docket No. CP99–21, for a certificate of public convenience and necessity, pursuant to Section 7(c) of the Natural Gas Act and part 157 of the Commission's regulations, to construct and operate pipeline and compression facilities all as more fully set forth in the amendment which is on file with the Commission and open to public inspection. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

On March 25, 1999, Northern Border filed with the Commission an amendment to its application in Docket No. CP99–21–001, wherein Northern Border modified the design of the pipeline and compression facilities it proposes. By this amendment, Northern Border now proposes to install approximately 34.4 miles of 30-inch pipeline (rather than 36-inch pipeline, as previously proposed), commencing from Northern Border's 36-inch pipeline near Manhattan, Illinois to a point near North Hayden, Indiana. The proposed pipeline extension will interconnect with Northern Indiana Public Service Company (NIPSCO) at the terminus of the pipeline at which point Northern Border proposes to install a meter station. The pipeline extension between Manhattan and Northern Hayden will have a design capacity of 544,000 Mcf/d and a maximum operating pressure of 1,050 psig. Due to the potential development of a new airport along the route of the proposed pipeline, Northern Border has been requested and proposes to install a tee and side valve on the pipeline extension near the site. Further, the planned cooling modifications at proposed Compressor Station No. 18 have been eliminated. The change in pipeline diameter from a 36-inch to 30-inch, and the elimination of cooling at Compressor Station No. 18 are the only facility changes from those proposed in the March 25, 1999, amendment.

As now amended, the estimated project cost is $94.4 million, in fourth quarter 1999 dollars. Northern Border says that it does not intend to use its cost projection in the instant application as the basis for an incentive rate proposal. Northern Border filed additional exhibits which compare the transportation cost for the year 2002 without the proposed facilities to the projected year 2002 cost with the proposed facilities in order to show the impact of rolling-in the proposed facilities on the first calendar year of operations' cost of service. Northern Border's year 2002 projected unit cost of service rate, including fuel, the proposed facility costs, and the related volumes in 4.30 center per 100 Dekatherm-Miles, which is the same as the unit cost without the proposed facilities and related volumes. Northern Border says that this demonstrates that Project 2000 is financially viable without ‘‘subsidy’’ from existing customers.

On September 15, 1999, the Commission issued a Statement of Policy in Docket No. PL99–3–000, ‘‘Certification of New Interstate Natural Gas Pipeline Facilities’’. The Policy Statement announced changes to the pricing and rate criteria applicable to new construction projects and, specified that applicants proposing to add new pipeline capacity must satisfy a threshold requirement of ‘‘no financial subsidies’’. The Policy Statement also announced that a project will also be evaluated based upon consideration of (i) the interests of the applicant's existing customers; (ii) the interests of competing existing pipelines and their captive customers, and (iii) the interests of landowners and surrounding communities. Where a project results in adverse impacts to any of members of these three stakeholder groups, the project sponsor must show how the specific public benefits resulting from its project outweigh the adverse effects the members of the three stakeholder groups.

Northern Border states that Project 2000, as now amended, meets the Commission's threshold ‘‘no financial subsidies’’ requirement of for certification. Further, its says that the public benefits of Project 2000 outweigh any adverse impacts to any members of the three stakeholder groups identified in the Policy Statement, because in its amendment, Northern Border describes in detail how Project 2000 does not have any adverse impact on the three stakeholder groups listed in the Policy Statement, Northern Border therefore requests that the Commission promptly certificate Project 2000, as hereby amended, and that such approvals issue no later than March 15, 2000.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 14, 2000, file with the Federal 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 of 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 commenters 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 Northern Border to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33715 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–46–000]

Northern Natural Gas Company; Notice of Application

December 22, 1999.

Take notice that on December 9, 1999, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP00–46–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA), and Part 157 of the Commission's Regulations thereunder (18 CFR 157.7 and 157.18), for permission and approval to abandon in-place five (5) 1,600 horsepower horizontal compressor units at the Ventura compressor station, with appurtenances, located in Hancock County, Iowa, all as more fully set forth in the request which is on file with the Commission and open to public inspection. The application may be viewed on the web at *www.ferc.fed.us.* Call (202) 208–2222 for assistance.

Northern states the horizontal compressor units at its Ventura compressor station proposed to be abandoned in the instant application are no longer needed due to changes in the operating configuration of its system since the units were initially installed. Northern asserts that the abandonment of these facilities will not result in the abandonment of service to any of Northern's existing shippers, nor will the proposed abandonment adversely effect capacity since the compression is no longer needed to meet current firm service obligations.

Any questions regarding this application should be directed to Keith L. Petersen, Director, Certificates and Reporting for Northern, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398–7421 or Michele Winckowski, Senior Regulatory Analyst, at (402) 398–7082.

Any person desiring to be heard or to make any protest with reference to said application should, on or before January 12, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, a protest or a motion to intervene in accordance with the requirements of the

Commission's Rules of Practice and Procedure (18 CFR 385.211 or 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. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedures, a hearing will be held without further notice before the Commission on this application if no protest or motion to intervene is filed within the time required herein. At that time, the Commission, on its own review of the matter, will determine whether granting the abandonment is required by the public convenience and necessity. If a protest or motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33717 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–003]

PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Change in FERC Gas Tariff

December 22, 1999.

Take notice that on December 2, 1999, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas First Revised Volume No. 1–A, First Revised Sheet No. 8 and Original sheet No. 8A, with an effective date of December 2, 1999.

PG&E GT–NW states that these sheets are being filed to reflect the implementation of a negotiated rate agreement.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33707 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–141–000]

Pine Needle LNG Company, LLC; Notice of Proposed Changes in FERC Gas Tariff Filing

December 22, 1999.

Take notice that on December 15, 1999, Pine Needle LNG Company, LLC (Pine Needle) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 50. The effective date for the tariff sheet is February 1, 2000.

Pine Needle states that the purpose of the instant filing is to revise Sections 7 (b) and (c) of the General Terms and Conditions of Pine Needle's Original Volume No. 1 Tariff to provide that the interest rate to be applied to unpaid amounts due from Customers and to overcharges by Pine Needle shall be the interest rate provided under 18 CFR 154.501(d)(1). This revision will conform Pine Needle's tariff to a common business practice being adopted by Pine Needle and its interstate affiliates, which is anticipated to be effective on Pine Needle's System February 1, 2000. In addition, Pine Needle's revision to such interest calculation is consistent with the interest calculation method reflected in the tariffs of numerous other pipelines.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be file in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assisance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33719 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–24–000 and RP00–24–001]

Transcontinental Gas Pipe Line Corporation; Notice of Date Change for Technical Conference

December 22, 1999.

Take notice that the technical conference on the above-referenced proceeding has been changed to Thursday, January 20, 2000, at 10:00 a.m.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33708 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–144–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 22, 1999.

Take notice that on December 14, 1999, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Seventeenth Revised Sheet No. 28, with an effective date of December 1, 1999.

Transco states that the purpose of the instant filing is to track rate and fuel changes attributable to storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28 the costs of which are included in the rates and charges payable under Transco's Rate Schedule S–2. The filing is being made pursuant to tracking provisions under Section 26 of the General Terms and Conditions of Transco's Third Revised Volume No. 1 Tariff.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33714 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–9–001]

Venice Gathering System, L.L.C.; Notice of Substitute Tariff Sheet Filing

December 22, 1999.

Take notice that on December 16, 1999, Venice Gathering System, L.L.C. (VGS), submitted for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet, with an effective date of January 10, 2000:

Substitute First Revised Sheet No. 2

VGS states that it is submitting this substitute tariff sheet to make a correction that was overlooked in the December 10 filing submitted to make ''housekeeping'' changes to correct typographical and grammatical errors in VGS' tariff. VGS states that it is proposing the same January 10, 2000 effective date for this substitute sheet.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33721 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–11–000]

Williston Basin Interstate Pipeline Company; Notice of Filing

December 22, 1999.

Take notice that on December 17, 1999, 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 December 17, 1999:

Third Revised Sheet No. 373
Third Revised Sheet No. 374
Sixth Revised Sheet No. 375
Third Revised Sheet No. 376

Williston Basin states that it has revised the above-referenced tariff sheets found in Section 48 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1 (Tariff), to rename various receipt points associated with its Pooling Service. The receipt points were renamed in order to achieve consistency among its Measurement Information Processing System, Supervisory Control and Data Acquisition System, Master Receipt/Delivery Point List on its Electronic Bulletin Board, and its Tariff. Such name changes have no effect on Williston Basin's Pooling Service, but are being made simply for consistency purposes.

Williston Basin states that it is also proposing the deletion of five receipt points associated with its Pooling Service: Point ID No. 00960 (Temple Plant) from the Can-Am Pool; Point ID No. 03140 (South Byron); Point ID No. 03145 (Garland Field); Point ID No. 03147 (Pearson Pratt A #1); and Point ID No. 03200 (Elk Basin Plant) from the Big Horn Pool.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33701 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–773–000, et al.]

New England Power Company, et al.; Electric Rate and Corporate Regulation Filings

December 21, 1999.

Take notice that the following filings have been made with the Commission:

1. New England Power Company

[Docket No. ER00–773–000]

Take notice that on December 10, 1999, New England Power Company (NEP) tendered a Stipulation and Agreement (Massachusetts Agreement) among NEP, the Associated Industries of Massachusetts, the Attorney General of Massachusetts, the Division of Energy Resources, The Energy Consortium, and Massachusetts Electric Company (Mass. Electric). The Massachusetts Agreement resolves all issues presented by NEP's December 1, 1998 ''Reconciliation of Contract Termination Charges'' to Mass. Electric.

Comment date: January 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Nordic Marketing, L.L.C.

[Docket No. ER00–774–000]

Take notice that on December 10, 1999, Nordic Marketing, L.L.C. (Nordic Marketing or Applicant) petitioned the Commission to: (1) accept for filing Nordic Marketing Rate Schedule FERC No. 1, which will permit Nordic Marketing to sell electric energy and capacity to wholesale customers at market-based rates; and (2) grant such other waivers and blanket authorizations as have been granted to other power marketers.

Nordic Marketing intends to engage in wholesale electric power and energy purchases and sales as a marketer. Neither Nordic Marketing nor any of its affiliates owns or controls any transmission or operating generation facilities, or has a franchised service area for the sale of electricity to captive customers.

Nordic Marketing does not currently sell power to any person pursuant to the proposed rate schedule. A copy of its filing, however, has been served on the Michigan Public Service Commission as a courtesy.

Comment date: December 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Aquila Energy Marketing Corporation

[Docket No. ER00–775–000]

Take notice that on December 10, 1999, Aquila Energy Marketing Corporation, an indirect wholly owned subsidiary of UtiliCorp United Inc., tendered for filing a revised code of conduct.

Comment date: December 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Duquesne Light Company and FirstEnergy Operating Companies, The Cleveland Electric Illuminating Company, Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER00–776–000]

Take notice that on December 13, 1999, Duquesne Light Company and the FirstEnergy Operating Companies (The Cleveland Electric Illuminating Company, Ohio Edison Company and Pennsylvania Power Company) (collectively, Parties), tendered for filing under Federal Power Act Section 205 an Interchange Agreement that is a result of the Parties recent generation exchange. The Parties request waiver of the Commission's regulations to permit the Interchange Agreement to become effective on December 3, 1999, the closing date of the generation exchange.

A copy of the filing was served upon the Pennsylvania Public Utility Commission and the Public Utilities Commission of Ohio.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Duquesne Light Company and FirstEnergy Operating Companies

[Docket No. ER00–777–000]

Take notice that on December 13, 1999, Duquesne Light Company and the FirstEnergy Operating Companies tendered for filing under Section 205 of the Federal Power Act a reactive supply and voltage control service agreement. The agreement is a result of the generation exchange previously approved by the Commission, and Duquesne's ownership of baseload generating units located within FirstEnergy's control area.

Copies of the filing were served upon the Pennsylvania Public Utility Commission and the Public Utilities Commission of Ohio.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Northern States Power Company (Minnesota Company)

[Docket No. ER00–778–000]

Take notice that on December 13, 1999, Northern States Power Company (Minnesota) (NSP), tendered for filing the Amendment No. 2, Revision No. 2 to Exhibit A, and Revision No. 11 to Exhibit B to the Interconnection Contract No. 6–07–60–P0236 (Contract) between the United States Department of Energy Western Area Power Administration (Western) and NSP.

NSP requests that the Commission accept the Agreements effective October 14, 1999, and requests waiver of the Commission's notice requirements in order for the Amendment and Revisions to be accepted for filing on the date requested.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Ameren Services Company

[Docket No. ER00–779–000]

Take notice that on December 13, 1999, Ameren Services Company (AMS), tendered for filing an Interconnection Agreement between AMS and Ameren Intermediate Holding Company (AIHC). AMS asserts that the purpose of the Agreement is to, among other things, establish the rights and obligations of AIHC, the point of interconnection and Corporate Guaranty.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Ameren Services Company

[Docket No. ER00–780–000]

Take notice that on December 13, 1999, Ameren Services Company (ASC), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between ASC and MidAmerican Energy Company—Retail (MEC). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to MEC pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96-677–004.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Ameren Services Company

[Docket No. ER00–781–000]

Take notice that on December 13, 1999, Ameren Services Company (ASC), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Services between ASC and MidAmerican Energy Company-Retail (MEC). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to MEC pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER 96–677–004.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. New Century Services Inc.

[Docket No. ER00–782–000]

Take notice that on December 13, 1999, New Century Services Inc. (NCS), on behalf of Public Service Company of Colorado (Public Service), tendered for filing the Master Power Purchase and Sale Agreement between Public Service and Utah Municipal Power Agency (UMPA), which is an umbrella service agreement under the Public Service's Rate Schedule for Market-Based Power Sales (Public Service FERC Electric Tariff, Original Volume No. 6).

NCS requests that this agreement become effective on October 24, 1999.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. PP&L Colstrip II

Docket No. ER00–783–000

Take notice that on December 13, 1999, PP&L Colstrip II, LLC, tendered for filing an amendment to the Colstrip Project Transmission Agreement dated May 6, 1981, to the Montana Intertie Agreement dated April 6, 1981, to the Ownership and Operation Agreement, Colstrip Units 3 and 4 dated May 6, 1981, and to the Common Facilities Agreement dated May 6, 1981. Portland General Electric Company executed a certificate of concurrence to the amendment.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Company of Oklahoma

[Docket No. ER00–784–000]

Take notice that on December 13, 1999, Public Service Company of Oklahoma (PSO), tendered for filing a revised Exhibit A to the Contract for Electric Service, dated September 29, 1992, as amended, between PSO and the City of Collinsville, Oklahoma (''Collinsville''). Revised Exhibit A reflects the addition of a temporary point of delivery.

PSO requests an effective date of December 14, 1999 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing have been served on Collinsville and on the Oklahoma Corporation Commission.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Entergy Services, Inc.

[Docket No. ER00–785–000]

Take notice that on December 13, 1999, Entergy Services, Inc. (Entergy), on behalf of Entergy Arkansas, Inc. (Entergy Arkansas), tendered for filing an Amended Interconnection and Operating Agreement between Entergy Arkansas and Pine Bluff Energy LLC (Pine Bluff).

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER00–786–000]

Take notice that on December 13, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 45 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of December 10, 1999 to Allegheny Energy Supply Company, LLC.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. PEC Energy Marketing, Inc.

[Docket No. ER00–787–000]

Take notice that on December 13, 1999 in the above-referenced proceeding, PEC Energy Marketing, Inc., tendered for filing Notice of Cancellation of its Supplement No. 3 to Rate Schedule FERC No. 1.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Cabrillo Power I LLC, Cabrillo Power II LLC, El Segundo Power, LLC

[Docket Nos. ER00–817–000, ER00–818–000 and ER00–819–000]

Take notice that on December 13, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ended September 30, 1999.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Long Beach Generation LLC

[Docket No. ER00–820–000]

Take notice that on December 10, 1999, Long Beach Generation LLC filed their quarterly report for the quarter ended September 30, 1999.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Portland General Electric Co.

[Docket No. ER98–1643–002]

On December 13, 1999, Portland General Electric Co. (PGE), tendered for filing notification of change in status to reflect certain departures from the facts the Commission relied upon in granting market-based rate authority. PGE informed the Commission of an agreement between Enron Corp., the parent company of PGE, and Sierra Pacific Resources, pursuant to which Sierra Pacific Resources will acquire PGE.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. TransAlta Centralia Generation LLC

[Docket No. EG00–49–000]

Take notice that on December 13, 1999, TransAlta Centralia Generation LLC (TACG) tendered for filing an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

20. Heartlands Power Limited

[Docket No. EG00–50–000]

Take notice that on December 14, 1999, Heartlands Power Limited (Applicant) filed with the Federal Energy Regulatory Commission an application for Commission determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant is organized under the Companies act of England and Wales and is now constructing, and will own, a 98 MW net gas-fired electrical generating facility in Fort Dunlap, Birmingham, England (the Facility). Construction of the Facility began in March, 1997, and the Facility is expected to be placed in operation in the fall of 2000. Upon completion, Applicant will sell all of the Facility's net electrical output at wholesale to the Electricity Pool of England and Wales. Catamount Heartlands Limited is scheduled to assume ownership of 50 per cent of Applicant's common stock. Catamount Heartlands Limited is a wholly-owned subsidiary of Catamount Energy Corporation, which is a wholly-owned subsidiary of Central Vermont Public Service Corporation, a public utility within the meaning of Part II of the Federal Power Act, 16 U.S.C. § 824 *et seq.*, and a holding company exempt from regulation as a holding company pursuant to Section 3(a)(2) of the Public Utility Holding Company Act. Applicant will be engaged directly and exclusively in the business of owning the Facility, which is an eligible facility as defined in Section 32(a)(2) of the 1935 Act, and which will sell electric energy at wholesale only. No electric energy produced by the Facility will be resold to any customer within the United States.

Copies of the application have been served upon the Vermont Public Service Board and the Securities and Exchange Commission.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

21. Catamount Heartlands Limited

[Docket No. EG00–51–000]

Take notice that on December 14, 1999, Catamount Heartlands Limited (Applicant) filed with the Federal Energy Regulatory Commission an application for Commission determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant is a wholly-owned subsidiary of Catamount Energy Corporation, which is a wholly-owned subsidiary of Central Vermont Public Service Corporation, a public utility within the meaning of Part II of the Federal Power Act, 16 U.S.C. § 824 *et seq.*, and a holding company exempt from regulation as a holding company pursuant to Section 3(a)(2) of the Public Utility Holding Company Act of 1935 (the 1935 Act).

The Applicant is organized under the Companies act of England and Wales and is scheduled to own a 50 per cent interest in Heartlands Power Limited (HPL). HPL is now constructing, and will own, a 98 MW net gas-fired electrical generating facility in Fort Dunlap, Birmingham, England (the Facility).

Construction of the Facility began in March, 1997, and the Facility is expected to be placed in operation in the fall of 2000. Applicant will be engaged indirectly, through its affiliate (as defined in Section 2(a)(11)(B) of the 1935 Act) HPL, exclusively in the business of owning part of the Facility, which is an eligible facility as defined in Section 32(a)(2) of the 1935 Act, and which will sell electric energy at wholesale only. No electric energy produced by the Facility will be resold to any customer within the United States.

Copies of the application have been served upon the Vermont Public Service Board and the Securities and Exchange Commission.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–33747 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9974–040]

Rough and Ready Hydro Inc.; Notice of Availability of Final Environmental Assessment

December 22, 1999.

A final environmental assessment (FEA) is available for public review. The FEA is for the proposed revocation of exemption from licensing for the Upper Watertown Hydroelectric Project (FERC No. 9974). The FEA finds that the proposed revocation would not constitute a major federal action significantly affecting the quality of the human environment. The Upper Watertown Hydroelectric Project is located on the Rock River in the City of Watertown, Jefferson County, Wisconsin.

The FEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA can be viewed at the Commission's Public Reference Room, Room 2A 888 First Street, NE, Washington, DC 20426. Copies can also be obtained by calling the project manager, Bob Fletcher at (202) 219–1206 or viewed on the web at http://www.ferc.fed.us/online/rims.htm. Please call (202) 208–2222 for assistance.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33702 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–36–000]

Guardian Pipeline, L.L.C.; Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Guardian Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings and Site Visit

December 22, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the guardian Pipeline Project in various counties of Illinois and Wisconsin.[1] these facilities would consist of about 149 miles of pipeline and 25,080 horsepower (hp) of compression. This EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner on Guardian's proposed route and receive this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Guardian provided to landowners along and adjacent to the proposed route. This fact sheet addresses a number of typically asked questions, including the use of eminent domain. It is available for viewing on the FERC Internet website (www.ferc.fed.us).

This notice is being sent to landowners of property crossed by and adjacent to Guardian's proposed route; landowners of property along a major route alternative; Federal, state, and local agencies; elected officials;

[1] Guardian Pipeline, L.L.C.'s application in Docket No. CP00–36–000 was filed with the Commission under Section 7(c) of the Natural Gas Act.

environmental and public interest groups; and local libraries and newspapers. Additionally, with this notice we are asking those Federal, state, local and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their agencies' responsibilities. Agencies who would like to request cooperating agency status should follow the instructions for filing comments described below.

To date, the Wisconsin Public Service commission (WIPSC) and the Wisconsin Department of Natural Resources have requested and been granted cooperating agency status.

Summary of the Proposed Project

Guardian Pipeline L.L.C. (Guardian) proposes to build new natural gas pipeline and compression facilities to transport 750,000 decatherms per day (Dth/d) of natural gas from the Chicago Hub near Joliet, Illinois to markets in northern Illinois and Wisconsin. Guardian requests Commission authorization, to construct, install, own, operate, and maintain the following facilities:

- About 140 miles of 36-inch-diameter pipeline in Will, Kendall, DeKalb, and McHenry Counties, Illinois and Walworth and Jefferson Counties, Wisconsin; extending from Joliet, Illinois to Ixonia, Wisconsin (Joliet to Ixonia Pipeline);
- About 8.5 miles of 16-inch-diameter lateral pipeline in Walworth and Waukesha Counties, Wisconsin (Eagle Lateral);
- A total of about 0.16 miles of 30-, 24-, and 16-inch-diameter pipelines in Will County, IL to interconnect the Guardian Pipeline with the Northern Border Pipeline Company, Midwestern Gas Transmission Company, and Natural Gas Pipeline Company of America;
- Seven meter/regulating stations including four stations in Will County, Illinois, and one station in each of Walworth, Waukesh, and Jefferson Counties, Wisconsin; and
- One compressor station with 25,080 hp in Will County, Illinois;
- Associated pipeline facilities, including two pig launchers, and two pig receivers.

The general location of Guardian's proposed project facilities is shown on the map attached as appendix 1.[2]

Wisconsin Gas Lateral Line

Wisconsin Gas Company (WGC) proposes to construct about 35 miles of 30-, 24-, and 16-inch-diameter pipeline (WGC Lateral Line Project) extending from northern terminus of the Guardian Pipeline eastward into Jefferson, Waukesha, and Washington Counties, Wisconsin. WGC's Lateral Line Project will be under the jurisdiction of the WIPSC. Although these facilities will not be under the jurisdiction of the FERC, they will be analyzed in this EIS. As noted above, the WIPSC is participating in the EIS process as a cooperating agency.

Land Requirements for Construction

Guardian would construct a total of about 149 miles of new pipeline of which about 91 miles would be in Illinois and 58 miles would be in Wisconsin. Construction of the Guardian Pipeline Project would require about 2,580 acres of land including extra workspace and aboveground facilities. Of this total, about 1,939 acres would be disturbed by construction of the pipeline right-of-way, 596 acres would be disturbed by extra workspace and contractor/pipe yards, and 45 acres would be disturbed by the aboveground facilities and access roads.

Guardian proposes to generally use a 70- to 110-foot-wide construction right-of-way along the Eagle Lateral. Smaller construction right-of-way widths would be used in tight construction areas and in wetlands. Following construction and restoration of the right-of-way and temporary work spaces, Guardian proposes to retain a 50-foot-wide permanent pipeline right-of-way along both the Joliet to Ixonia Pipeline and the Eagle Lateral. Total land requirements for the permanent right-of-way would be about 900 acres with an additional 24 acres required for the operation of the new or modified aboveground facilities.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping.'' The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

Our independent analysis of the issues will be in the Draft EIS which will be mailed to Federal, state, and local agencies, public interest groups, affected landowners and other interested individuals, newspapers, libraries, and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the Draft EIS. We will consider all comments on the Draft EIS and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our response to each comment received on the Draft EIS and will be used by the Commission in its decision-making process to determine whether to approve the project.

Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified a number of issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Guardian. These issues are listed below. This is a preliminary list of issues and may be changed based on your comments and our analysis.

- Soils
  - —Impact on prime farmland soils.
  - —Mixing of topsoil and subsoil during construction.
  - —Compaction of soil by heavy equipment.
  - —Impact on drain tiles and irrigation systems.
  - —Erosion control and right-of-way restoration.
- Water Resources
  - —Impact on areas with shallow groundwater.
  - —Fourteen waterbody crossings 25 feet wide or greater.
  - —Crossing of two waterbodies designated as sensitive/unique, three waterbodies listed as Illinois Natural Inventory Sites, and one waterbody classified as a National Historic Landmark.
  - —Effect of crossing waterbodies with contaminated sediments.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

—Potential for erosion and sediment transport to area waterbodies.
—Impact on groundwater and surface water supplies.
—Impact on wetland hydrology.

- Biological Resources

—Short- and long-term effects of right-of-way clearing and maintenance on wetlands, forests, riparian areas, and vegetation communities of special concern.
—Effects of construction on about 31 acres of wetlands and 51 acres of forest.
—Impact on wildlife and fishery habitats.
—Potential impact on federally endangered species such as the Indiana bat and on federally threatened species such as the prairie bush clover and eastern prairie fringed orchid.
—Potential impact on state-listed sensitive species.

- Cultural Resources

—Effect on historic and prehistoric sites.
—Native American concerns.

- Socioeconomics

—Effect on the construction workforce on demands for services in surrounding areas.
—Impact on property values.

- Land Use

—Impact on crop production.
—Impact on residential areas.
—Effects of construction on about 35 acres of Conservation Reserve Program land.
—Impact on public lands and special use areas including waterbodies, state scenic trails, a state recreation area, county parks, city/township private parks and campgrounds, and golf courses.
—Impact on future land uses and consistency with local land use plans and zoning.
—Visual effect of the aboveground facilities on surrounding areas.

- Air Quality and Noise

—Construction impact on local air quality and noise environment.
—Impact on local air quality and noise environment as a result of operation of the compressor stations.

- Pipeline Reliability and Safety
- Cumulative Impact

—Effect of Guardian Project combined with that of other projects that have been or may be proposed in the same region and similar time frames.

- Nonjurisdictional Facilities

—Assessment of the effects of the construction of the WGC Lateral Line Project.

- Alternatives

—Evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Public Participation and Scoping Meetings

You can make a difference by sending a letter addressing your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1;
- Reference Docket No. CP00–036–000;
- Mail your comments so that they will be received in Washington, DC on or before February 4, 2000.

[If you do not want to send comments at this time but still want to remain on our mailing list, you must return the Information Request (appendix 3). If you do not send comments or return the Information Request, you will be taken off the mailing list.]

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meetings the FERC will conduct in the project area. The locations and times for these meetings are listed below. [Note: the meeting in Oconomowoc, Wisconsin on January 25, 2000 will be a joint scoping meeting with the WIPSC which will be receiving public comments on the WGC Lateral Line Project.]

Schedule of Public Scoping Meetings for the Guardian Pipeline Project Environmental Impact Statement

Janaury 25, 2000, 7:00 PM
Oconomowoc, Wisconsin, Olympia Conference Center, 1350 Royale Mile Road, (800) 558–9573

January 25, 2000, 7:00 PM
Delavan, Wisconsin, Lake Lawn Lodge, 2400 East Geneva St., (800) 338–5253

Janaury 26, 2000, 7:00 PM
DeKalb, Illinois, Northern Illinois University, Holmes Student Center, Normal & Lucinda Roads, (815) 753–1744

January 26, 2000, 7:00 PM
Joliet, Illinois, Joliet Junior College, 1215 Houbolt Road, (815) 729–9020.

The public meetings are designed to provide you with more detailed information and another opportunity to offer your comments on the proposed project. Guardian representatives will be present at the scoping meetings to describe their proposal. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues they believe should be addressed in the Draft EIS. A transcript of each meeting will be made so that your comments will be accurately recorded.

Site Visit

On the dates of the meetings, we will also be conducting limited site visits to the project area. Anyone interested in participating in the site visit may contact the Commission's Office of External Affairs identified at the end of this notice for more details and must provide their own transportation.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding or become an ‘‘intervenor.’’ Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

The time period for filing of timely motions to intervene in this proceeding closes on December 28, 1999. If this date has passed, parties seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the ''RAMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS Menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33716 Filed 12–28–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00635; FRL–6398–4]

Notice of Supplemental Distribution of a Registered Pesticide Product; Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): ''Notice of Supplemental Distribution of a Registered Pesticide Product'' (EPA No. 0278.07; OMB 2070–0044). This ICR is a renewal of a collection activity that is currently approved and due to expire on September 30, 2000. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number OPP–00635, must be received on or before February 28, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00635 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cameo Smoot, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–5454; fax number: (703) 305–5884; e:mail address: smoot.cameo@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a pesticide registrant who has entered into an agreement with a second company to distribute your pesticide product under the second company's name and product name. Section 3(e) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requires pesticide registrants to notify the Agency of such distribution agreements. Potentially affected categories and entities may include, but are not limited to:

Category	NAICS code	SIC codes	Examples of potentially affected entities
Pesticide and other agricultural chemical manufacturing	325320	286—Industrial organic chemicals 287—Agricultural chemicals	Pesticide registrants

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes and the Standard Industrial Classification (SIC) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. Electronically

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

B. Fax-on-Demand

Using a faxphone call (202) 401–0527 and select item 6078 for a copy of the ICR.

C. In Person

The Agency has established an official record for this action under docket control number OPP–00635. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00635 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments and/or data electronically by e-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described in Units III.A.1. and 2. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00635. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under ''FOR FURTHER INFORMATION CONTACT.''

C. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number and administrative record number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Notice of Supplemental Distribution of a Registered Pesticide Product.

ICR numbers: EPA ICR No. 0278.07, OMB No. 2070–0044.

ICR status: Expires September 30, 2000.

Abstract: EPA is responsible for the regulation of pesticides as mandated by the FIFRA, as amended. This collection activity provides the Agency with notification of supplemental registration of distributors of pesticide products. Section 3(e) of FIFRA allows pesticide registrants to distribute or sell a registered pesticide product under a different name instead of or in addition to his own. Such distribution and sale is termed ''supplemental distribution'' and the product is termed ''distributor product.'' EPA requires the pesticide registrant to submit a supplemental statement (EPA Form 8570–5) when the registrant has entered into an agreement with a second company that will distribute the registrant's product under the second company's name and product name. Any pesticide registrant may participate in this program by submitting a completed EPA Form 8570–5, ''Notice of Supplemental Distribution of a Registered Pesticide Product,'' to the Agency. The registrant must furnish the following information:

1. EPA registration number of the product to be distributed.

2. Distributor company number.

3. Name and address of the basic product registrant.

4. Name of the registered product to be distributed.

5. Name to be used on the distributed product.

6. Name and address of the distributor.

7. Signature and title of the distributor and date signed.

8. Signature and title of the basic product registrant and date signed.

Since the last approval, EPA has not changed the substance or the method of collection for this activity.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden is estimated to average l5 minutes per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Pesticide registrants.

Estimated total number of potential respondents: 5,000.

Frequency of response: As needed per event.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 1,250.

Estimated total annual burden costs: $118,350.

VI. Are There Changes in the Estimates from the Last Approval?

The total burden associated with the supplemental distribution of a registered pesticide product has decreased from 1,500 hours in the 1997 ICR to 1,250. This adjustment represents an improved estimate of the volume of responses received by the Agency. The previous estimate of 6,000 responses per year has been adjusted to reflect the new estimate of 5,000 responses per year.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under ''FOR FURTHER INFORMATION CONTACT.''

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: December 14, 1999.

Susan H. Wayland,

Deputy Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–33331 Filed 12–28–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00624; FRL–6388–6]

Recordkeeping Requirements for Certified Applicators Using 1080 Collars for Livestock Protection; Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): ''Recordkeeping Requirements for Certified Applicators Using 1080 Collars for Livestock Protection (OMB Control No. 2070–0074; EPA No. 1249.06).'' This is a request to renew an existing ICR that is currently approved and is due to expire June 30, 2000. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number OPP–00624 must be received on or before [*insert date 60 days after date of publication in the* **Federal Register**].

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00624 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cameo Smoot, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: 703–305–5454; fax number: 703–305–5884; e-mail address: smoot.cameo@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are one of the approximately 120 certified pesticide applicators, who utilize 1080 toxic collars for livestock protection. Or a State Agency that implements a 1080 collar monitoring program in the state of Montana, New Mexico, South Dakota, or Wyoming. Or are one of the five registrants are required to keep records of: (1) number of collars purchased; (2) number of collars placed on livestock; (3) number of collars punctured or ruptured; (4) apparent cause of puncture or rupture; (5) number of collars lost or unrecovered; (6) number of collars in use and in storage; and (7) location and species data on each animal poisoned as an apparent result of the toxic collar. Potentially affected categories and entities may include, but are not limited to:

Category	NAICS codes	SIC codes	Examples of potentially affected entities
Pesticide and other agricultural chemical manufacturing	325320	286—Industrial organic chemicals 287—Agricultural chemicals	Pesticide registrants whose products include 1080 collars

Category	NAICS codes	SIC codes	Examples of potentially affected entities
Administration of Environmental Quality Control Programs	9241	None	States implementing a 1080 collar monitoring program

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes and the Standard Industrial Classification (SIC) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. Electronically

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

B. Fax-on-Demand

Using a faxphone call (202) 401–0527 and select item 6076 for a copy of the ICR.

C. In Person

The Agency has established an official record for this action under docket control number OPP–00624. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00624 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments and/or data electronically by e-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described in Units III.A.1. and 2. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00624. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under ''FOR FURTHER INFORMATION CONTACT.''

C. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number and administrative record number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the

functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Recordkeeping Requirements for Certified Applicators Using 1080 Collars for Livestock Protection.

ICR numbers: EPA ICR No. 1249.06, OMB No. 2070–0074.

ICR status: This is a renewal of an existing ICR that is currently approved by OMB and is due to expire June 30, 2000. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under the Paperwork Reduction Act, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: The data that certified Livestock Protection Collar applicators are required to record and maintain are stipulated in ''Use Restriction 5'' in the technical bulletin that is part of the labeling for all Livestock Protection Collar products registered as pesticides in the United States. Use Restriction 5, from a typical technical bulletin, reads as follows:

''Each applicator shall keep records dealing with the use of Livestock Protection Collars and the results of such use. Records shall be maintained in accordance with appropriate State or Federal regulations but for not less than 2 years following disposal or loss of collars. Such records shall include, but need not be limited to:

1. The number of collars attached on livestock.

2. The pasture(s) where collared livestock were placed.

3. The dates of each attachment, inspection, and removal.

4. The number and locations of livestock found with ruptured or punctured collars and the apparent cause of the damage.

5. The number, dates, and approximate location of all collars lost.

6. The species, locations, and dates of all suspected poisonings of humans, domestic animals or non-target wild animals resulting from collar use.''

Use Restriction 6, from the same typical technical bulletin, requires that ''suspected'' poisonings of ''threatened or endangered species, . . . humans, domestic animals or nontarget wild animals'' be reported, within 3 days of the incident, to a designated Government Agency (EPA and/or the appropriate state lead agency for regulation of pesticides). The EPA requires certified Livestock Protection Collar applicators to keep and report no records other than those prescribed by Use Restrictions 5 and 6.

Livestock Protection Collar registrants are required, by Use Restriction 4 of the same typical technical bulletin, to:

> . . . keep records of all collars sold or transferred at their address of record. Records shall include the name, address, state where Livestock Protection Collar certification was issued, certification number of each recipient, and dates and numbers of collars sold or transferred.

Use Restriction numbers and content vary somewhat from product to product due to additional restrictions or considerations either proposed by the registrants or required by state lead agencies. As a condition of registration, the EPA has required submission of annual reports monitoring use of all of Livestock Protection Collar products. Depending upon the product, the registrant or the state lead agency for pesticide regulation is designated as being responsible for annual monitoring report. The requirement to submit reports is imposed for at least the first 4 years of the collars' use under the registration. Factors affecting the extension of requirements to submit annual reports include: (1) quality of reports submitted previously; (2) results of collar use (in terms of numbers punctured by coyotes, numbers punctured by other causes, numbers lost, nontarget poisonings, etc.); and (3) frequency and nature of violations reported. In 1992, the requirement to submit annual monitoring reports was dropped for one Livestock Protection Collar product.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for the Recordkeeping Requirements for Certified Applicators Using 1080 Collars for Livestock Protection is estimated to average 40 hours per certified applicator, 77 hours per state, and 9 hours per registrant. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Certified applicators, states, and registrants.

Estimated total number of potential respondents: 120 certified applicators, 4 states, 5 registrants.

Frequency of response: Annually.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 5,153.

Estimated total annual burden costs: $51,048.

VI. Are There Changes in the Estimates from the Last Approval?

Yes. The Agency reduced its estimate of the number of certified applicators from the previous ICR (from 150 to 120). Overall, the total burden on respondents has been reduced from 6,439 hours to 5,153 hours. Changes in the total cost associated with this program are due to the wage rates adjustment, reflecting the most current estimates.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR

1320.10. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under ''FOR FURTHER INFORMATION CONTACT.''

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: December 20, 1999.

Stephen L. Johnson,

Acting Deputy Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–33458 Filed 12–28–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6516–9]

Notice of Settlement Extension: National Ambient Air Quality Standard for Sulfur Oxides Remand

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of settlement extension.

SUMMARY: In 1998, the United States Court of Appeals for the District of Columbia Circuit remanded EPA's decision to not revise the National Ambient Air Quality Standard for sulfur oxides for further explanation by EPA. *American Lung Association* v. *Browner,* 134 F. 3d 388 (D.C. Cir. 1998). Subsequently, the American Lung Association (ALA) and EPA agreed that EPA would propose a response to the court's remand by summer, 1999 and that EPA would finalize its response to the remand by the end of the year 2000. In exchange, ALA agreed to not file a petition for rehearing *en banc* with the court and to not pursue any mandatory duty or unreasonable delay claims regarding the remand prior to January, 2001.

In September, 1999, EPA and ALA met to discuss the status of the remand and agreed to extend the summer, 1999 deadline until January 15, 2000. During the time of the extension, EPA will continue to work on the remand.

Dated: December 9, 1999.

Gary S. Guzy,

General Counsel.

[FR Doc. 99–33830 Filed 12–28–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00637; FRL–6485–9]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Open Meeting.

SUMMARY: There will be a 2–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of scientific issues being considered by the Agency pertaining to atrazine cancer risk assessment.

The meeting is open to the public. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Laura Morris at the address listed under ''FOR FURTHER INFORMATION CONTACT'' at least 5 business days prior to the meeting so that appropriate arrangements can be made.

DATES: The meeting will be held on Thursday, January 27, and Friday, January 28, 2000, from 8:30 a.m. to 5:30 p.m.

Request to participate in the meeting must be received on or before January 27, 2000.

ADDRESSES: Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA. The telephone number for the Sheraton Hotel is: (703) 486–1111.

Requests and/or comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00637 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Laura Morris, Designated Federal Official, FIFRA SAP (7101C), Office of Science Coordination and Policy, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–6212; fax number: (703) 605–0656; e-mail address: morris.laura@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

A meeting agenda and copies of EPA background documents for the meeting will be available early January, 2000. The meeting agenda and EPA primary background documents will be available on the FIFRA SAP web site -- http://www.epa.gov/scipoly/sap/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–00637. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall 2 (CM #2,) 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How Can I Request to Participte in this Meeting?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00637 in the subject line on the first page of your response. Members of the public wishing to submit comments should contact the persons listed under ''FOR FURTHER INFORMATION CONTACT'' to confirm that the meeting date and the agenda have not been modified or changed.

Interested persons are permitted to file written statements before the meeting. To the extent that time permits, and upon advanced written request to the persons listed under ''FOR FURTHER INFORMATION CONTACT'', interested persons may be permitted by the Chair of the FIFRA SAP to present oral statements at the meeting. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard, etc). There is no limit on the length of written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. The Agency also urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements should notify the persons listed under ''FOR FURTHER INFORMATION CONTACT'' and submit 40 copies of the summary information. The Agency encourages that written statements be submitted before the meeting to provide Panel Members the time necessary to consider and review the comments.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00637. Electronic comments may also be filed online at many Federal Depository Libraries.

II. Background

A. Purpose of the Meeting

This 2–day meeting concerns the pesticide, atrazine, which is currently undergoing Special Review within the EPA/Office of Pesticide Programs (OPP). Atrazine is a mammary carcinogen. There are several issues surrounding the interpretation of experimental data pertaining to tumor response in test animals. Laboratory animal studies available on atrazine indicate that its mode of action involves a perturbation of the neuroendocrine system that results in prolonged exposure to endogenous estrogen and prolactin. This endogenous exposure to estrogen leads to effects on several endocrine organs and tissues. Given the complexity and multiplicity of effects that result from exposure to atrazine, OPP is at a point in its assessment of atrazine where external peer review by the FIFRA SAP would facilitate further development and refinement of the draft carcinogen assessment document. Furthermore, very little is understood about the long term consequences that may result from prenatal and early postnatal exposures to endocrine-perturbing chemicals. Presenting the atrazine cancer assessment to the FIFRA SAP at this time allows the Agency an opportunity to obtain comments on the adequacy of the approach taken by the Agency to address potential cancer hazard to children.

The purpose of the session is not to discuss the dose-response assessment (i.e., quantification of potential risk). The focus of this session is to obtain advice and comments on the draft document on specific science issues, such as: the factors that should be considered in evaluating this particular endocrine mode of action; the relevance and implications of this type of perturbation in humans; the key biological events driving the hazard concern; and the potential cumulative effects and hazards on the developing brain that could result from the effects of atrazine on the function of the endocrine system.

B. Panel Report

Copies of the Panel's report of their recommendations will be available approximately 45 working days after the meeting, and will be posted on the FIFRA SAP web site or may be obtained by contacting the Public Information and Records Integrity Branch at the address or telephone number listed in Unit I. of this document.

List of Subjects

Environmental protection.

Dated: December 21, 1999.

Martha K. Shimkin,

Acting Director, Office of Science Coordination and Policy, Office of Pesticides Programs.

[FR Doc. 99–33628 Filed 12–28–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6516–6]

Meeting of the Local Government Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Local Government Advisory Committee will meet on February 10–11, 2000, in Chattanooga, TN. The theme of the meeting is sustainability/smart growth. There will be two panel discussions in the morning on February 10. Participants on the first panel will be from Chattanooga and will discuss how EPA helped or hindered the City's redevelopment efforts. Participants on the second panel, will be EPA officials and they will discuss the Agency's programs policies, and tools for smart growth/sustainability. Subcommittee sessions will take place on both February 10 and 11.

The Committee will hear comments from the public between 1 pm and 1:15 pm on February 10. Each individual or organization wishing to address the Committee will be allowed a minimum of three minutes. Please contact the Designated Federal Officer (DFO) at the number listed below to schedule agenda time. Time will be allotted on a first come, first serve basis.

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available after the meeting and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the number listed below if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible. However, seating will be on a first come, first serve basis.

DATES: The meeting will begin at 8:15 a.m. on Thursday, February 10 and conclude at 4:00 p.m. on February 11.

ADDRESSES: The meetings will be held in Chattanooga, TN at the Radisson Read House Hotel and Suites located at M.L. King Blvd. and Broad Street.

Requests for Minutes and other information can be obtained by writing the DFO at 401 M Street, SW (1306), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The DFO for this Committee is Denise Zabinski Ney. She is the point of contact for information concerning any Committee matters and can be reached by calling (202) 260–0419.

Dated: December 20, 1999.

Denise Zabinski Ney,

Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. 99–33774 Filed 12–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6516–8]

Regulatory Reinvention (XLC) Pilot Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Steele County Project XL for Communities (XLC) Draft Final Project Agreement.

SUMMARY: EPA is today requesting comments on a draft Project XLC Final Project Agreement (FPA) for Steele County, MN. The FPA is a voluntary agreement developed by the Steele County Community Sponsors, the Cities of Owatonna and Blooming Prairie, MN, project stakeholders, the Minnesota Pollution Control Agency (MPCA), and EPA.

DATES: The period for submission of comments ends on January 28, 2000.

ADDRESSES: All comments on the draft Final Project Agreement should be sent to: Abeer Hashem, Water Division, WC–15J, US EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604–3507, or Kristina Heinemann, U.S. EPA, 401 M Street, SW, Room 445WT (1802), Washington, DC 20460. Comments may also be faxed to Ms. Hashem at (312) 886–0168 or Ms. Heinemann at (202) 260–7875. Comments will also be received via electronic mail sent to: hashem.abeer@epa.gov or heinemann.kristina@epa.gov.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the draft Final Project Agreement, contact: Abeer Hashem, Water Division, WC–15J, U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604–3507, or Kristina Heinemann, U.S. EPA, 401 M Street, SW, Room 445WT (1802), Washington, DC 20460. The documents are also available via the Internet at the following location: ‘‘http://www.epa.gov/ProjectXL’’. In addition, public files on the Project are located at EPA Region 5 in Chicago, IL. Questions to EPA regarding the documents can be directed to Abeer Hashem at (312) 886–1331 or Kristina Heinemann at (202) 260–5355. Additional information on Project XL and XLC, including documents referenced in this notice, other EPA policy documents related to Project XL and XLC, application information, and descriptions of existing XL and XLC projects and proposals, is available via the Internet at ‘‘http://www.epa.gov/ProjectXL’’.

SUPPLEMENTARY INFORMATION: Project XLC, announced in the **Federal Register** on November 1, 1995 (60 FR 55569), gives regulated sources the flexibility to develop alternative strategies that will replace or modify specific regulatory requirements on the condition that they produce greater environmental benefits.

If implemented, the draft FPA would carry out the first phase of a community-wide project consisting of a two-phase approach to attain Environmental Excellence and Leadership. This draft FPA states the intentions of the parties to implement Phase I of the Steele County, MN Community XL Project Pilot.

Phase I would specifically address industrial regulated wastewater effluent reductions, and at the same time concentrate on significant water use reduction controls. Phase II would expand to a multi-media approach to environmental permitting. It would be based on overall community performance, rather than individual member performance, in the areas of air emissions, solid waste, hazardous waste, chemical storage, and community sustainability.

In Phase I, direct participants from the Steele County community have agreed jointly to four Superior Environmental Performance (SEP) approaches. The Owatonna, MN Sponsors have committed to: (1) Reduce the discharge of four priority metals; (2) reduce water usage; (3) develop and implement a storm water and sewer water separation and education plan in an effort to minimize the impact of storm water on the Owatonna wastewater treatment facility; and (4) develop and participate in a training and assessment program to better understand potential benefits of an ISO 14000 Environmental Management System (EMS). The Blooming Prairie, MN Sponsor has agreed to: (1) Reduce the discharge of three priority effluents; and (2) reduce water usage.

Phase I of this agreement would also provide regulatory flexibility to the Owatonna Sponsors in the following areas: (1) An incentive-based monitoring approach, such that as metal discharge goals are met, the frequency of monitoring may be reduced; (2) a mass-based compliance standard would replace the concentration-based standard currently in place; (3) the elimination of pollutant monitoring where a pollutant is not discharged; (4) the development of an alternative Significant Non-Compliance (SNC) approach, under which qualifying violations may be posted on the MPCA website in lieu of being published in the local newspaper. Phase I of this agreement would provide regulatory flexibility to the Blooming Prairie Sponsor in two areas: (1) An incentive-based monitoring approach, such that as effluent discharge goals are met, the frequency of monitoring may be reduced; and (2) the elimination of pollutant monitoring where a pollutant is not discharged. Regulatory flexibility will rely on EPA to issue a federal site-specific rule (subject to public notice and consideration of public comment) and any corresponding State and City action needed for the project to proceed.

For Phase I current regulatory limits for participating facilities would remain in effect. The regulatory limits would be changed from concentration-based limits to mass-based limits. An exceedance of a mass-based limit could result in the use of traditional enforcement tools.

Dated: December 22, 1999.

Richard T. Farrell,

Associate Administrator, Office of Policy and Reinvention.

[FR Doc. 99–33775 Filed 12–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6516–5]

Chesapeake 2000; A Watershed Partnership Draft for Public Review and Comment

U.S. Environmental Protection Agency, Chesapeake Bay Program Office is releasing this draft document to solicit your comments. It has been developed by the Chesapeake Bay Program partners with the assistance of thousands of citizens, scientists and policy makers from throughout the Chesapeake Bay region. It contains commitments that are far reaching and that address issues of the waters and living resources of the Bay and its rivers, and the land and air that surround them. It is intended to take us well into the next decade and beyond.

For the most part, the document represents issues that the signatories believe must be addressed. In order to finalize our decisions, we must hear from you. Have we addressed your concerns? Will the Bay and its rivers be better off as a result of the commitments proposed?

Public comments will be received until March 31, 2000. A copy of this document is available by calling 1–800–YOUR–BAY or by visiting: www.chesapeakebay.net. Comments will only be accepted in writing either through the web page comment box or by mail.

William Matuszeski,

Director, Chesapeake Bay Program Office.

[FR Doc. 99–33773 Filed 12–28–99; 8:45 am]

BILLING CODE 6560–50–M

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.: 203–011517–007.

Title: APL/Crowley/Lykes Space Charter and Sailing Agreement.

Parties: American President Lines, Ltd., APL Co., PTE Ltd., Crowley American Transport, Inc. (To be renamed Hamburg-Sudamerikanische Dampfschifffahrtsgesellschaft Eggert & Amsinck d/b/a/ Crowley American Transport), Lykes Lines Limited, LLC.

Synopsis: The proposed Agreement adds Evergreen Marine Corp. (Taiwan) Ltd., as a party to the agreement; changes the name of the agreement to reflect Evergreen's name; amends article 5(a) to reflect the space allocations to Evergreen; makes technical and non-substantive revisions to other articles of the agreement; and restates the agreement. The parties request expedited review.

Agreement No.: 232–011683.

Title: Contship/CMA CGM/Marfret Space Charter and Sailing Agreement.

Parties: CMA, CGM, Compagnie Maritime Marfret, Contship Containerlines Limited.

Synopsis: The proposed agreement authorizes the parties to charter vessels and vessel space to each other, interchange equipment, jointly enter into arrangements with terminal operators, and agree on the number, size and type of vessels to operate in the trade between U.S. Atlantic Coast ports and U.S. points, and ports and points in the Indian subcontinent, Australia, and New Zealand. The agreement also covers the U.S. inbound trade from Northern Europe, the Mediterranean Sea, the Red Sea, and South East Asia.

Dated: December 23, 1999.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–33843 Filed 12–28–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Beacon International, Inc., 39 Beacon Street, Port Reading, NJ 07064, Officer: Alexis Gil, President (Qualifying Individual)

Asean Logistics, Inc., 350 S. Crenshaw Blvd., Suite A204, Torrance, CA 90503, Officers: Kai Kung Chan (aka: Peter Chan), Vice President (Qualifying Individual), Paul Pomroy, CEO.

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants:

Paradigm International, Inc., 2057 N.W. 79th Avenue, Miami, FL 33122, Officer: Jacques A. Nijankin, President (Qualifying Individual).

Pro Ag Logistics, LLC, 4225 Nicols Road, Eagan, MN 55122–1910, Officers: Scott A. Frane, President, (Qualifying Individual), Cynthia D. Frane, Vice President.

Dated: December 23, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–33842 Filed 12–28–99; 8:45 am]

BILLING CODE 6730–01–P

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 January 12, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Mooresville Savings Bank, SSB, Inc., Employee Stock Ownership Plan, Mooresville, North Carolina; to retain voting shares of Coddle Creek Financial Corp., Mooresville, North Carolina, and thereby indirectly retain voting shares of Mooresville Savings Bank, Inc., SSB, Mooresville, North Carolina.

Board of Governors of the Federal Reserve System, December 23, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–33819 Filed 12–28–99; 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 (12 U.S.C. 1843). 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 January 21, 2000.

A. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Centerstate Banks of Florida, Inc., Winter Haven, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Osceola County, Kissimmee, Florida, and thereby indirectly acquire Community National Bank of Pasco County, Zephyrhills, Florida, and First National Bank of Polk County, Winter Haven, Florida.

2. Century South Banks, Inc., Dahlonega, Georgia; to merge with Lanier Bankshares, Inc., Gainesville, Georgia, and thereby indirectly acquire Lanier National Bank, Gainesville, Georgia.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. PremierWest Bancorp, Medford, Oregon; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Southern Oregon, Medford, Oregon, and 100 percent of the voting shares of United Bancorp, Roseburg, Oregon, and thereby indirectly acquire Douglas National Bank, Roseburg, Oregon.

In connection with this application, Applicant has also applied to acquire DNB Mortgage Company, Roseburg, Oregon, and thereby engage in making, acquiring, brokering, or servicing loans or other extensions of credit, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, December 22, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–33725 Filed 12–28–99; 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 (12 U.S.C. 1843). 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 January 21, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Omni Financial Services, Inc., Atlanta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of United National Bank, Fayetteville, North Carolina.

In connection with this application, Applicant has also applied to engage *de novo* in making and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, December 23, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–33820 Filed 12–28–99; 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 January 12, 2000.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Concord EFS, Inc., Memphis, Tennessee; to acquire National Payment Systems, Inc., New York, New York (d/b/a Card Payment Systems), and thereby engage in data processing activities, pursuant to § 225.28(b)(14)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, December 23, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–33818 Filed 12–28–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Meeting of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission will discuss (a) its ongoing project examining ethical issues in international research and (b) its new project examining issues arising from the oversight human subjects research in the United States. Some Commission members may participate by telephone conference. The meeting is open to the public and opportunities for statements by the public will be provided on January 13, 2000 from 1:30 pm–2:00 pm.

Dates/Times and Location

January 13, 2000, 8:30 am–5 pm—The Madison Hotel, 15th and M Street, NW, Washington, DC 20005

January 14, 2000, 8 am–12 noon—Same Location as Above

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1999 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President, and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral statements should contact Ms. Jody Crank by telephone, fax machine, or mail as shown below as soon as possible, at least 4 days before the meeting. The Chair will reserve time for presentations by persons requesting to speak and asks that oral statements be limited to five minutes. The order of persons wanting to make a statement will be assigned in the order in which requests are received. Individuals unable to make oral presentations can mail or fax their written comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. The Commission also accepts general comments at its website at bioethics.gov. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Crank, National Bioethics Advisory Commission, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Dated: December 20, 1999.

Eric M. Meslin,

Executive Director, National Bioethics Advisory Commission.

[FR Doc. 99–33823 Filed 12–28–99; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Special Emphasis Panel (SEP); Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of these Special Emphasis Panel (SEP) meetings.

SEPs are committees used for scientific review activities. These committees have members drawn from a list of experts who are designated to serve for particular individual meetings rather than for extended fixed terms of service.

Substantial segments of these upcoming SEP meetings listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10 (d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6). Grant applications are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of SEP:* Health Research Dissemination and Implementation.

Date: January 31, 2000 (Open from 8 a.m. to 8:15 a.m. and closed for the remainder of the meeting).

Place: AHCPR, 6010 Executive Blvd., 4th Floor Conference Center, Rockville, Maryland 20852.

2. *Name of SEP:* Health Care Markets and Managed Care.

Date: February 3–4, 2000 (Open from 8:30 a.m. to 8:45 a.m. and closed for remainder of the meeting).

Place: AHCPR, 6010 Executive Blvd., 4th Floor Conference Center, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain a roster of members or minutes of these meetings should contact Ms. Jenny Griffith, Committee Management Officer, Office of Research Review, Education and Policy, AHCPR, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1847.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: December 20, 1999.

John M. Eisenberg,

Administrator.

[FR Doc. 99–33687 Filed 12–28–99; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Health Services Research Initial Review Group Committee; Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), The Agency for Health Care Policy and Research (AHCPR) announces meetings of scientific peer review groups. The subcommittees listed below are part of the Agency's Health Services Research Initial Review Group Committee.

The subcommittee meetings will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6). Grant applications are to be reviewed and discussed at these meetings. These discussions are likely to include personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of Subcommittee:* Health Care Research Training.

Date: February 10–11, 2000 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: AHCPR, Executive Office Center, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

2. *Name of Subcommittee:* Health Care Technology and Decision Sciences.

Date: February 24–25, 2000 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: AHCPR, Executive Office Center, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

3. *Name of Subcommittee:* Health Care Quality and Effectiveness Research.

Date: March 2–3, 2000 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: AHCPR, Executive Office Center, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

4. *Name of Subcommittee:* Health Systems Research.

Date: March 6–7, 2000 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: AHCPR, Executive Office Center, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain a roster of members or minutes of the meetings should contact Ms. Jenny Griffith, Committee Management Officer, Office of Research Review, Education and Policy, AHCPR, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1847.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: December 20, 1999.

John M. Eisenberg,

Administrator.

[FR Doc. 99–33688 Filed 12–28–99; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Research Agenda Subcommittee of the Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following subcommittee meeting.

Name: Research Agenda Subcommittee of the Board of Scientific Counselors.

Time and Date: 9:30 a.m.–11 a.m., January 5, 2000.

Place: The conference call will originate from the Agency for Toxic Substances and Disease Registry, in Atlanta, Georgia. Please see ''Supplementary Information'' for details on accessing the conference calls.

Status: Open to the public, limited by the availability of telephone ports.

Purpose: This subcommittee will advise the Board of Scientific Counselors and the Agency on areas of emphasis and focus for the ATSDR five-year environmental public health research agenda. The subcommittee will report jointly to the Board of Scientific Counselors and the ATSDR Associate Administrator for Science.

Matters to be Discussed: The conference call is to finalize plans for a workshop with ATSDR partners and community and tribal representatives, and continue planning efforts in the development of the ATSDR five-year environmental public health research agenda.

Supplementary Information: This conference call is scheduled to begin at 9:30 a.m., EST. To participate in the conference call, please dial 1–800–311–3437 and enter conference code 264428. You will then be automatically connected to the call.

Contact Person for More Information: Robert F. Spengler, Sc.D., Executive Secretary, BSC, ATSDR, M/S E–28, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–0708.

The Director, Management Analysis and Services Office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: December 22, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–33740 Filed 12–28–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Research Agenda Subcommittee of the Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following subcommittee meeting.

Name: Research Agenda Subcommittee of the Board of Scientific Counselors.

Time and Date: 8:30 a.m.–4:10 p.m., January 19, 2000.

Place: Radisson Inn Hotel, 2061 North Druid Hills Road, Atlanta, Georgia 30329, telephone 404/321–4174.

Status: Open to the public, limited by the available space. The meeting room accommodates approximately 60 people.

Purpose: This subcommittee will meet to obtain individual advice and comments regarding the formation of ATSDR's Five-Year Environmental Public Health Research Agenda from scientific and public health partners and community and tribal constituents.

Matters to be Discussed: Agenda items will include an overview of ATSDR's Research Program; discussions on exposure assessment; evaluation and surveillance of health effects; evaluation of chemical mixtures; health promotion and intervention; children, minorities, and other special populations; and special issues concerning tribes and communities which will help to identify research needs.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Robert F. Spengler, Sc.D., Executive Secretary, BSC, ATSDR, M/S E–28, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–0708.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 22, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–33741 Filed 12–28–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[60Day–00–16]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506 (c) (2) (A) of the Paperwork reduction Act of 1995, the Centers for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

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 for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

The Incidence of Breast and Other Cancers among Female Flight Attendants—New—National Institute for Occupational Safety band Health (NIOSH)—Flight attendants experience exposures which may affect breast cancer risk including exposure to elevated levels of cosmic radiation and circadian rhythm disruption. This study will evaluate the incidence of breast and other cancers among a cohort of approximately 10,000 women who were employed as flight attendants.

The occurrence of breast and other cancers will be obtained from death certificates and from telephone interviews with living women and next-of-kin of deceased women. Each interview will take approximately 60 minutes to complete. Medical records will be requested to confirm cancer diagnoses. The primary analysis will evaluate the risk of breast and other cancers associated with occupational exposure within the cohort. The secondary analysis will compare the incidence of breast and other cancers in the cohort to that in the general population, with adjustment for factors which might increase cancer risk in the cohort independent of occupational exposure to cosmic radiation and circadian rhythm disruption. The total cost to respondents is estimated at $165,400.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
Flight attendants/proxies	10,000	1	1	10,000
Flight attendants/proxies whose eligibility for the study is unknown	300	1	0.083	25
Medical providers	1,000	1	0.5	500
Total				10,525

Dated: December 21, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–33728 Filed 12–28–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–00–17]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

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 for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

The Centers for Disease Control and Prevention (CDC) proposes to continue data collection for congenital syphilis case investigations under the ''Congenital Syphilis Case Investigation and Report Form'' (CDC 73.126 REV 11–98); this form is currently approved under OMB No. 0920–0128. This request is for a 3-year extension of clearance. Reducing congenital syphilis is a national objective in the DHHS Report entitled *Healthy People 2000: Mid-course Review and 1995 Revisions.* Objective 19.4 of this document states the goal: ''reduce congenital syphilis to an incidence of no more than 40 cases per 100,000 live births'' by the year 2000. In order to meet this national objective, an effective surveillance system for congenital syphilis must be continued in order to monitor current levels of disease and progress towards the year 2000 objective. This data will also be used to develop intervention strategies and to evaluate ongoing control efforts.

Respondent burden is approximately 15 minutes per reported case. The estimated annual number of cases expected to be reported using the current case definition is 1,000 or less. Therefore, the total number of hours for congenital syphilis reporting required will be approximately 250 hours per year. The total estimated cost for this project is $7,275. The estimated cost to the Federal government is $3,750; this figure includes the cost of printing the form and staff time in preparing reports for publication and mailing. The annualized cost to the respondents is $3,525 based on an estimated support staff salary of $15 per hour.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
State and local health department	65 areas	Varies—cases are reported by occurrence.	.25/hour (15 minutes)	1.083
Total				1.083

Dated: December 21, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–33730 Filed 12–28–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–07–00]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

1. Management of Occupational Blood Exposures and Antibiotic Prescription Practices Among United States Dentists—NEW—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP). In U.S. health care facilities, both occupational transmission of bloodborne pathogens and antimicrobial resistance are important problems with significant morbidity and costs. Several public health initiatives have been undertaken or are being developed to increase compliance with recently published recommendations to reduce occupational transmission of bloodborne pathogens and to assess current antibiotic use by physicians, hospital and other medical health-care workers. However, to date, there are limited data on dentists' implementation and knowledge of postexposure recommendations or on their antibiotic use. Therefore, the Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Division of Oral Health, intends to conduct a survey of the management of occupational blood exposures and antibiotic prescription practices among United States dentists. Information provided by these data are critical to the Division of Oral Health's ongoing efforts to protect dental workers from infection with bloodborne diseases and to target educational efforts aimed at increasing awareness of and compliance with current CDC recommendations. Information on antibiotic prescribing practices will help identify the most effective strategies for promoting appropriate use of antibiotics among dentists, provide an epidemiologic baseline on which to measure future behaviors, and assess the need for comprehensive guidelines.

A random sample of currently practicing U.S. dentists will be mailed questionnaires with two follow-up mailings to non-respondents. The information collected will include demographic information, office policies for management of occupational blood exposures and training of dental staff, the weekly number of antibiotic prescriptions, the most commonly prescribed antibiotics, and the most common oral conditions for which antibiotics are prescribed. The total annual burden hours are 3600.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)
Practicing U.S. Dentists	3,600	1	0.25

Dated: December 21, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–33729 Filed 12–28–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Refugee State-of-Origin Report ORR–11.

OMB No.: 0970–0043.

Description: The information collection of the ORR–11 (Refugee State-of-Origin Report) is designed to satisfy the statutory requirements of the Immigration and Nationality Act. Section 412(a)(3) of the Act requires ORR to compile and maintain data on the secondary migration of refugees within the United States after arrival.

In order to meet this legislative requirement, ORR requires each State to submit an annual count of the number of refugees who were initially resettled in another State. The State does this by counting the number of refugees with social security numbers indicating residence in another State at the time of arrival in the U.S. (The first three digits of the social security number indicate the State of residence of the applicant.)

Data submitted by the States are compiled and analyzed by the ORR statistician, who then prepares a summary report which is included in ORR's annual Report to Congress. The primary use of the data is to quantify and analyze refugee secondary migration among the 50 States. ORR uses these data to adjust its refugee arrival totals in order to calculate the ORR social services formula allocation.

Respondents: State, Local or Tribal Government.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State-of-Origin Report	50	1	4.333	217

Estimated Total Annual Burden Hours: 217.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resources Management Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register,** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington, DC 20503, Attn: ACF Desk Officer.

Dated: December 21, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–33690 Filed 12–28–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–5325]

Agency Information Collection Activities: Proposed Collection; Comment Request; Irradiation in the Production, Processing, and Handling of Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the recordkeeping and labeling requirements for food irradiation processors.

DATES: Submit written comments on the collection of information by February 28, 2000.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520) Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Irradiation in the Production, Processing, and Handling of Food—21 CFR Part 179 (OMB Control Number 0910–0186—Extension)

Under sections 201(s) and 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(s) and 348), food irradiation is subject to regulation as a food additive. The regulations providing for uses of irradiation in the production, processing, and handling of food are found in part 179 (21 CFR part 179).

To assure safe use of radiation source, § 179.21(b)(1) requires that the label of sources bear appropriate and accurate information identifying the source of radiation and the maximum energy of radiation emitted by X-ray tube sources. Section 179.21(b)(2)(i) requires that the label or accompanying labeling bear adequate directions for installation and use.

Section 179.25(e) requires that food processors who treat food with radiation make and retain, for 1 year past the expected shelf life of the products up to a maximum of 3 years, specified records relating to the irradiation process (e.g., the food treated, lot identification, scheduled process, etc.).

The records required by § 179.25(e) are used by FDA inspectors to assess compliance with the regulation that establishes limits within which radiation may be safely used to treat food. The agency cannot ensure safe use without a method to assess compliance with the dose limits, and there are no practicable methods for analyzing most foods to determine whether they have been treated with ionizing radiation and are within the limitations set forth in part 179. Records inspection is the only way to determine whether firms are complying with the regulations for treatment of foods with ionizing radiation.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
179.21(b)(1) and 179.21(b)(2)(i)	4	1	4	5	20

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
179.25(e)	3	120	360	1	360

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The number of firms who process food using irradiation is extremely limited. FDA estimates that there is a single irradiation plant whose business is devoted primarily (i.e., approximately 100 percent) to irradiation of food and other agricultural products. Two other firms also irradiate small quantities of food (mainly spices). FDA estimates that this irradiation accounts for no more than 10 percent of the business for each of these firms. Although recent FDA rulemaking has authorized the irradiation of red meat, United States Department of Agriculture/Food Safety and Inspection Service (USDA/FSIS) has yet to issue a rule regarding meat irradiation. Actual implementation of meat irradiation cannot take place until USDA/FSIS final regulations are in place, which may not take place until later this fiscal year. At this time, FDA has no basis for estimating the extent of changes in the food irradiation business as a result of future USDA/FSIS actions. Therefore, the average estimated burden is based on: (1) Facility devoting 100 percent of its business (or 300 hours for recordkeeping annually) to food irradiation; (2) facilities devoting 10 percent of their business or 60 hours (2 x 30 hours) for recordkeeping annually, to food irradiation or (300 + 60)/3 = 120 x 3 firms x 1 hour = 360 hours annually.

No burden has been estimated for the labeling requirements in §§ 179.21(b)(2)(i) and (b)(2)(ii) and 179.26(c) because the information to be disclosed is information that has been supplied by FDA. Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not a collection of information.

Dated: December 22, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 99–33761 Filed 12–28–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0240]

Agency Information Collection Activities; Announcement of OMB Approval; Veterinary Feed Directive

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ‘‘Veterinary Feed Directive’’ has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In a proposed rule entitled ‘‘Animal Drug Availability Act; Veterinary Feed Directive’’ that appeared in the **Federal Register** of July 2, 1999 (64 FR 35966 at 35970), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0325. The approval expires on September 30, 2002. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: December 22, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 99–33758 Filed 12–28–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–0529]

Agency Information Collection Activities; Announcement of OMB Approval; Guidance for Industry: Changes to an Approved New Drug Application (NDA) or Abbreviated New Drug Application (ANDA)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ‘‘Guidance for Industry: Changes to an ‘‘Approved NDA or ANDA’’ has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 23, 1999 (64 FR 65716), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under the emergency processing provisions of the PRA (44 U.S.C. 3507(j) and 5 CFR 1320.13). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the collection of information and has assigned OMB control number 0910–0431. The approval expires on May 31, 2000. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: December 22, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 99–33760 Filed 12–28–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–4068]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Advisory Opinions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by January 28, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Advisory Opinions—21 CFR 10.85 (OMB Control Number 0910–0193)—Extension

Section 10.85 (21 CFR 10.85), issued under section 701(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(a)), provides that an interested person may request an advisory opinion from the Commissioner of Food and Drugs (the Commissioner) on a matter of general applicability. Section 10.85 sets forth the format and instructions for making an advisory opinion request. When making a request, the petitioner must provide a concise statement of the issues and questions on which an opinion is requested and a full statement of the facts and legal points relevant to the request. An advisory opinion represents the formal position of FDA on a matter of general applicability. Respondents to this collection of information are parties seeking an advisory opinion from the Commissioner on the agency's formal position for matters of general applicability.

In the **Federal Register** of September 28, 1999 (64 FR 52329), the agency requested comments on the proposed collection of information. No significant comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
10.85	3	1	3	16	48

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate for this collection of information is based on an average for the period 1996 through 1998 with each advisory opinion requiring an estimated 16 hours of preparation time.

Dated: December 22, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 99–33757 Filed 12–28–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–4069]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice of Participation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by January 28, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Notice of Participation—21 CFR 12.45 (OMB Control Number 0910–0191)—Extension

Under part 12 (21 CFR part 12) regulations issued under sections 201 to 903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 to 393), any interested person may participate in a formal evidentiary hearing, either personally or through a representative by filing a notice of participation under § 12.45. Section 12.45 requires that any person filing a notice of participation state the person's specific interest in the proceedings, including the specific issues of fact about which the person desires to be heard. This section also requires that the notice include a statement that the person will present testimony at the hearing and will comply with specific requirements in § 12.85 or, in the case of a hearing before a public board of inquiry, in 21 CFR 13.25, concerning disclosure of data and information by participants. A participant's appearance can be struck by the presiding officer in accordance with § 12.45(e). The information obtained is used by the presiding officer and other participants in a hearing to identify specific interests to be presented. This preliminary information serves to expedite the prehearing conference and commits participation. The affected respondents are individuals or households, State or local governments, not-for-profit institutions and businesses or other for-profit groups and institutions.

In the **Federal Register** of September 28, 1999 (64 FR 52330), the agency requested comments on the proposed collections of information. No significant comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
12.45	30	1	30	3	90

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The agency bases this estimate on an average for the period 1996 through 1998 in which each notice of participation filed took an estimated 3 hours to complete.

Dated: December 22, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 99–33759 Filed 12–28–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Office of Strategic Planning; Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 63, No. 45, p. 11448 dated Monday, March 9, 1998 is amended to reflect a functional realignment in the Office of Strategic Planning. The realignment moves the international communications function from the Office of Professional Relations, Center for Health Plans and Providers to the Office of Strategic Planning (OSP). The purpose of the realignment is to consolidate HCFA's international communications function within OSP to better serve the needs of the international community and intergovernmental agencies.

The specific amendments to part F are described below:

Section F.20., (Functions) is amended to read as follows:

4. Office of Strategic Planning (FAK)

- Develops and manages the long-term strategic planning process for the Agency; responsible for the Agency's conformance with the Strategic Plan requirements of the Government Performance and Results Act (GPRA).
- Provides analytic support and information to the Administrator and the Executive Council needed to establish Agency goals and directions.
- Performs environmental scanning, identifying, evaluating, and reporting emerging trends in health care delivery and financing and their interactions with Agency programs.
- Manages strategic, crosscutting initiatives.
- Designs and conducts research and evaluations of health care programs, studying their impacts on beneficiaries, providers, plans, States and other partners and customers, designing and assessing potential improvements, and developing new measurement tools.
- Coordinates all Agency demonstration activities, including development of the research and demonstration annual plan, evaluation of all Agency demonstrations, and assistance to other components in the design of demonstrations and studies.
- Manages assigned demonstrations, including Federal review, approval, and oversight; coordinates and participates with departmental components in experimental health care delivery projects.
- Develops research, demonstration, and other publications and papers related to health care issues.
- Serves as contact in HCFA for international visitors. Responds to requests from intergovernmental agencies and the international community for information related to the United States health care system.

Dated: November 23, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 99–33746 Filed 12–28–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for the Bighorn Sheep in the Peninsular Ranges for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the bighorn sheep in the Peninsular Ranges of southern California. The Peninsular bighorn sheep represents a distinct vertebrate population that is restricted to east facing, lower elevation slopes typically

below 1,400 meters (4,600 feet) of the Peninsular Ranges in the Sonoran Desert life zone. The population addressed in this recovery plan extends from the San Jacinto and Santa Rosa Mountain ranges in Riverside County south through numerous smaller mountain ranges in Imperial and San Diego Counties to the United States and Mexico international border. The Service solicits review and comment from local, State, and Federal agencies, and the public on this draft recovery plan.

DATES: Comments on the draft recovery plan must be received on or before February 14, 2000 to receive consideration by the Service.

ADDRESSES: The draft recovery plan is available for public inspection by appointment during normal business hours at the Service's Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California, 92008. Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor (attention Pete Sorensen) at the above address or by calling (760) 431–9440. Comments and materials should be submitted to the above address and are available on request for public inspection by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office.

FOR FURTHER INFORMATION CONTACT: Pete Sorenson or Andy Yuen at the above Carlsbad address.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting and delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans. Individual responses to comments will not be provided.

Bighorn sheep have been documented in the Peninsular Ranges since the 1700's (Bolton 1930). An examination of past records and current data suggest that the distribution of bighorn sheep has been altered during the past 25 years. There is no documentation of newly formed ewe groups, and in portions of the range, formerly occupied habitat is now unoccupied. Documented population declines of Peninsular bighorn sheep ranged from stable low numbers in ewe groups to 28 percent declines in other groups. Though cause and effect relationships for these population declines have not been well documented among ewe groups, cumulative and synergistic effects of disease, high predation rates, low population recruitment rates, habitat loss, modification, and fragmentation, and human-related disturbance are likely, contributing factors.

The objective of this recovery plan is to secure habitat and alleviate threats to the overall Peninsular bighorn sheep population so that population levels will increase to the point that this species may be downlisted to threatened status, and ultimately delisted.

Recovery of the bighorn sheep in the Peninsular Ranges is contingent upon (1) providing large tracts of habitat that provide a diversity of resources needed to offset seasonal, annual, and longer term cycles of environmental variability and scarcity, (2) establishing habitat continuity between subpopulations to allow long term shifts in distribution, (3) maintaining healthy population levels that are resilient to potential disease outbreaks and high levels of predation, and (4) educating the public on human-related activities that affect habitat use patterns of Peninsular bighorn sheep.

The draft plan was developed by a recovery team composed of representatives of the Agua Caliente Band of Cahuilla Indians, Bureau of Land Management, U.S. Forest Service, California Department of Fish and Game, California Department of Parks and Recreation, Bighorn Institute, University of California at Davis and White Mountain Research Station, and the Zoological Society of San Diego. Short-term recovery objectives proposed are to: (a) Maintain 25 or more ewes in 9 regions of the Peninsular ranges during 1 bighorn sheep generation, and (b) establish regulatory mechanisms and land management commitments to provide for long-term protection of Peninsular bighorn sheep. Proposed recovery actions include protecting essential habitat, improving habitat management capabilities, and conducting monitoring and research necessary for effective management. The long-term objective is to manage conserved lands to provide for permanent protection needed for continued population viability of bighorn sheep in the Peninsular Ranges. Delisting of the Peninsular bighorn sheep will be achieved when: (1) Greater than or equal to 25 ewes are present in the 9 specified regions of the Peninsular Ranges during 2 bighorn sheep generations, without augmentation, (2) the range-wide population averages 750 individuals in a stable or increasing population, and (3) essential habitat, as described in the recovery plan, is permanently protected through regulatory mechanisms and land management commitments.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 9, 1999.

Thomas Dwyer,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 99–32577 Filed 12–28–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Environmental Impact Statement and Receipt of an Application for an Incidental Take Permit for the High Desert Power Project, Victorville, San Bernardino County, California

AGENCY: Fish and Wildlife Service, Interior (Lead Agency); Bureau of Land Management, Interior and Corps of Engineers, Army (Cooperating Agencies).

ACTION: Notice of availability.

SUMMARY: The High Desert Power Project Limited Liability Company (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The proposed 50-year permit would authorize the incidental take of the threatened desert tortoise (*Gopherus agassizii*) in connection with the development, operation, maintenance, and eventual decommissioning of the High Desert Power Project (Power Project) in San Bernardino County, California. The proposed permit would also authorize the incidental take, in connection with the Power Project, of the Mohave ground squirrel (*Spermophilis mohavensis*), a species listed as threatened by the State of California, in the event that species becomes listed as threatened or endangered under the Endangered Species Act during the term of the requested permit.

The Service, in cooperation with the Bureau of Land Management and the Army Corps of Engineers, has prepared a draft Environmental Impact Statement addressing the potential effects on the human environment that may result from the proposed granting of an incidental take permit and other federal actions associated with the construction and operation of the Power Project.

The permit application, including the Applicant's proposed Habitat Conservation Plan and Implementing Agreement, are available for public review and comment. The Environmental Impact Statement also is available for public review and comment. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public.

DATES: Written comments must be received on or before February 23, 2000.

ADDRESSES: Comments should be addressed to Ms. Diane Noda, Field Supervisor, Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. Written comments may also be sent via facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Mr. George Walker, Fish and Wildlife Service Biologist, Barstow, California, at (760) 255–8852.

SUPPLEMENTARY INFORMATION:

Document Availability

Copies of the incidental take permit application materials and draft Environmental Impact Statement are available for review at the following government offices and libraries:

Government Offices—Fish and Wildlife Service, Ventura Field Office, 2493 Portola Road, Suite B, Ventura, California 93003, (805) 644–1766; and the Bureau of Land Management, Barstow Field Office, 2601 Barstow Road, Barstow, California 92311, (760) 252–6000.

Libraries—California State Library, Information and Reference Center, 914 Capital Mall, Room 301, Sacramento, California 95814, (916) 654–0261; San Bernardino County Library, Adelanto Branch, 11744 Bartlett Avenue, Adelanto, California 92301, (760) 246–5661, San Bernardino County Library, Victorville Branch, 15011 Circle Drive, Victorville, California 92392, (760) 245–4222.

Background

Section 9 of the Endangered Species Act and Federal regulation prohibit the "take" of animal species listed as endangered or threatened. That is, no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 USC 1538). Under limited circumstances, the Service, however, may issue permits to authorize "incidental take" of listed animal species (defined by the Endangered Species Act as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). Regulations governing permits for threatened and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22.

The High Desert Power Project Limited Liability Company seeks an incidental take permit for the threatened desert tortoise, and for the Mohave ground squirrel should it be listed under the Act during the term of the permit. Take of these species would be incidental to the High Desert Power Project. The Applicant proposes to construct, operate and maintain a 680- to 830-megawatt natural gas-fueled electricity generation power plant on a 25-acre site located in the northeast corner of the Southern California Logistics Airport, formerly a part of George Air Force Base, in the City of Victorville, San Bernardino County, California. The Applicant proposes to use an additional 24-acre area for construction staging. The proposed project also includes the construction, operation and maintenance of 7 water injection/extraction wells within the Mojave River watershed; 2 water supply pipelines (one approximately 2.5 miles in length and the other approximately 6.5 miles in length); 2 natural gas supply pipelines (one approximately 3.5 miles in length and the other approximately 32 miles in length); and a 7-mile-long electrical transmission line.

Construction of the Power Project and associated facilities would result in short-term, long-term, and permanent disturbances to desert tortoise and Mohave ground squirrel habitat. The Power Project would disturb approximately 630.2 acres of habitat, with approximately 244.1 acres of short-term disturbance and 386.1 acres of long-term and/or permanent disturbance.

The Applicant proposes to minimize and/or mitigate for impacts associated with the Power Project, in part, by conducting pre-construction surveys of proposed work areas and construction zones, and by developing an employee and contractor education program that would describe allowable practices when constructing in desert tortoise and Mohave ground squirrel habitat area. The Applicant would revegetate habitat disturbed during construction, operation, maintenance, and/or decommissioning activities in accordance with an approved habitat conservation plan. As compensation for impacts to habitat on private land, the Applicant would ensure the protection in perpetuity of 1,242.8 acres of off-site mitigation lands or habitat credits, having habitat value for both desert tortoises and Mohave ground squirrels that is at least as great as the value of the habitat being impacted. The number of compensation acres was developed based on an agency-approved formula which assesses the categories of previous and potential disturbance, the condition and classification of the impacted habitat, and potential impacts to adjacent habitat.

In addition to issuance of an incidental take permit by the Service, the High Desert Power Project Limited Liability Company has requested other Federal authorizations for the proposed project. The Applicant seeks Nationwide Permit No. 12 authorizations by the Army Corps of Engineers, pursuant to Section 404 of the Clean Water Act, for pipeline crossings of waters of the United States. The Applicant also seeks a right-of-way grant from the Bureau of Land Management pursuant to Section 28 of the Mineral Leasing Act of 1920, to authorize construction, operation and maintenance of the 32-mile natural gas pipeline. To mitigate for impacts to desert tortoise and Mohave ground squirrel associated with construction and operation of this gas pipeline, the Applicant proposes that funding for restoration activities may be provided either in lieu of or in combination with the purchase of compensation lands or habitat credits.

In December 30, 1998, a notice was published in the **Federal Register** (61 FR 71940) announcing that the Service would take the lead in preparing an

Environmental Impact Statement addressing the Federal actions associated with the Power Project. The Bureau of Land Management and Army Corps of Engineers may use this Environmental Impact Statement as the basis for their separate Federal permit decisions. Comments received by the agencies during scoping were considered and are reflected in the draft Environmental Impact Statement made available for comment through this notice.

The draft Environmental Impact Statement analyzes the potential environmental impacts that may result from the Federal actions requested in support of the proposed development of the High Desert Power Project, and identifies various alternatives, including the No Action Alternative (no incidental take permit), the Combined Cycle Power Plant with Dry Cooling Alternative, and various alternatives proposing the power plant be located in different locations. Several of these alternatives would reduce the amount of habitat disturbance and levels of take of threatened and endangered species compared to the Proposed Project Alternative but would have potentially greater adverse effects on other resources such as air quality, land use, views, and geological hazards.

The analysis provided in the draft Environmental Impact Statement is intended to accomplish the following: inform the public of the proposed action and alternatives; address public comment received during the scoping period; disclose the direct, indirect, and cumulative environmental effects of the proposed actions and each of the alternatives; and indicate any irreversible commitment of resources that would result from implementation of the proposed action.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and Fish and Wildlife Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6).

Dated: December 21, 1999.

Elizabeth H. Stevens,

Deputy Manager, Region 1, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 99–33616 Filed 12–28–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Finding of No Significant Impact, and Receipt of an Application for an Incidental Take Permit for a Proposed Commercial Development Called Mangrove Bay, Palm Beach County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Senior Lifestyle Jupiter Corporation and The Mangrove Bay Master Limited Partnership (Applicants) request an incidental take permit (Permit) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (U.S.C. 1531 *et seq.*), as amended (Act). The Applicants anticipate taking one family of the threatened Florida scrub-jay (*Aphelocoma coerulescens*) incidentally to the clearing of land associated with the development of an assisted-care living facility. The proposed commercial development will occur in section 8, Township 41 South, Range 43 East, in the town of Jupiter, Palm Beach County, Florida.

The clearing of the property for commercial construction will destroy habitat occupied by the Florida scrub-jay (scrub-jay). A more detailed description of the mitigation and minimization measures to address the effects of the Project to the protected species are outlined in the Applicant's Habitat Conservation Plan (Plan), the Service's draft Environmental Assessment (EA), and in the SUPPLEMENTARY INFORMATION section below.

The Service also announces the availability of the draft EA and Plan for the incidental take application. Copies of the draft EA and/or Plan may be obtained by making a request to the Regional Office (see ADDRESSES). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the Permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (NEPA). The preliminary Finding of No Significant Impact (FONSI) is based on information contained in the EA and Plan. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

The Service specifically requests information, views, and opinions from the public via this Notice on the Federal action, including the identification of any other aspects of the human environment not already identified in the Service's EA. Further, the Service specifically solicits information regarding the adequacy of the Plan as measured against the Service's Permit issuance criteria found in 50 CFR Parts 13 and 17.

If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Regional Office (see ADDRESSES). You may also comment via the internet to ''david__dell@fws.gov''. Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed below (see FURTHER INFORMATION). Finally, you may hand deliver comments to either Service office listed below (see ADDRESSES). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not; however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

DATES: Written comments on the Permit application, draft EA, and Plan should be sent to the Service's Regional Office (see ADDRESSES) and should be received on or before January 28, 2000.

ADDRESSES: Persons wishing to review the application, Plan, and draft EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, GA. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia

30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, Post Office Box 2676, Vero Beach, FL. 32961–2676. Written data or comments concerning the application, draft EA, or Plan should be submitted to the Regional Office. Requests for the documentation must be in writing to be processed. Comments must be submitted in writing to be adequately considered in the Service's decision-making process. Please reference permit number TE020656–0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313, facsimile: 404/679–7081; or Mr. Mike Jennings, Fish and Wildlife Biologist, South Florida Field Office, Vero Beach, Florida (see **ADDRESSES** above), telephone: 561/562–3909.

SUPPLEMENTARY INFORMATION: The Florida scrub-jay (scrub-jay) is geographically isolated from other species of scrub-jays found in Mexico and the western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (predominately in oak dominated scrub). Increasing urban and agricultural development have resulted in habitat loss and fragmentation which has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

The decline in the number and distribution of scrub-jays in southeastern Florida has been greater than in most other regions of the State. Southeastern Florida has experienced tremendous urban growth in the past 50 years and much of this commerical and residential development has occured on the dry soils which historically supported scrub-jay habitat. Based on existing soils data, much of the historic and current scrub-jay habitat of coastal east Florida occurs along a narrow stretch of historic sand dunes situated on a north-south axis from Dade to Flagler County. Much of this area of Florida was settled early because few wetlands restricted urban and agricultural development. Due to the effects of urban and agricultural development over the past 100 years, much of the remaining scrub-jay habitat is now relatively small and isolated. What remains is largely degraded due to the suppression of the wildfires that maintained xeric uplands in conditions suitable for scrub-jays.

Scrub-jays using the Project site and adjacent lands are considered part of a larger complex of scrub-jays that occupy xeric uplands of southeastern Florida. This complex of scrub-jay families ranges from about eastcentral Martin County south to northeastern Palm Beach County. The majority of scrub-jays within this complex are found within Jonathan Dickinson State Park which is located about 10 miles north of the Project site. The continued survival of scrub-jays in this area may depend on the maintenance of suitable habitat and the restoration of unsuitable habitat in northeastern Palm Beach and southeastern Martin counties.

Scrub-jay use of the Project site and adjacent lands has been assessed on two occasions. In February 1998, field investigations determined that one scrub-jay family comprising three individual birds used portions of the Project site as well as adjacent lands. Systematic surveys conducted in April 1998 documented use of about 2.7 acres of suitable habitat within the Project site by one family represented by two individual birds.

The Project site represents one of the few remaining undeveloped parcels east of the Intracoastal Waterway in northern Palm Beach County that provides habitat for the scrub-jay. Several tracts of public conservation lands are also located in the vicinity of the Project site, but much of the remaining landbase has been developed for commercial or residential uses. The Project site is bounded on three sides by urban development and the site itself has been negatively influenced by previous land clearing activities, off-road vehicle use, and invasion by exotic species. Due to the proximity of the Project site to existing residential and commercial development, fire has been actively excluded because of safety concerns. As a result, the condition of the xeric habitat within the Project site is degraded; periodic fire or land management practices that mimic fire are required to maintain habitat conditions suitable for the scrub-jay.

Land clearing in preparation for commerical construction will destroy habitat and result in death of, or injury to, scrub-jays, incidentally to the carrying out of these otherwise lawful activities. Habitat alteration associated with the proposed commerical development will reduce the availability of feeding, nesting, and sheltering habitat for scrub-jays.

The Applicant's Plan and the Service's draft EA describe the following minimization and mitigation strategy to be employed by the Applicants to offset the impacts of the Project to the scrub-jay:

- The Applicants agree to preserve, restore, and manage 1.77 acres of scrub-jay habitat within the project site.
- The Applicants agree to avoid disturbance to occupied scrub-jay habitat during the nesting season.
- The Applicants agree to further minimize impacts by using native xeric plants for ornamental purposes through the commerical facility when completed.
- The Applicants agree to avoid land clearing activities during the scrub-jay nesting season.
- The Applicants agree to compensate for the unavoidable destruction of 1.67 acres of occupied scrub-jay habitat by providing funding in the amount of $124,093 to acquire and manage scrub-jay habitat in southeastern Florida, conduct public outreach, and/or fund research, as specified by the Service.
- In the event the on-site preserve is not occupied by scrub-jays within three years following completion of the commerical construction, the Applicants also agree to provide additional funding in the amount of $93,465 to acquire and manage scrub-jay habitat in southeastern Florida, conduct public outreach, and/or fund research, as specified by the Service.

The draft EA considers the environmental consequences of one action alternative which would require issuance of a Permit. The no action alternative (not issue the Permit) will ultimately result in loss of scrub-jay habitat within the Project site due to habitat degradation. The no action alternative may also expose the Applicants under Section 9 of the Act. The preferred alternative would affect about 1.67 acres of occupied scrub-jay habitat while protecting and enhancing 1.77 acres of habitat on-site. Additional scrub-jay habitat would also be acquired in the future and managed with the funding provided by the Applicants.

The proposed action alternative is issuance of the Permit according to the Plan as submitted and described above. Under the proposed alternative, the effect of the proposed minimization and mitigation measures will be the protection, restoration, and management of 1.77 acres of scrub-jay habitat within the Project site that will provide habitat for nesting, foraging, and shelter and stop-over habitat for dispersing birds. With management of on-site habitat, existing conditions may improve over the long-term for scrub-jays in the vicinity. The contribution of mitigation funding will provide the Service opportunities to protect and manage other suitable habitat in southeastern Florida. Mitigation funding will likely be used in combination with other matching sources of money to target the purchase of larger tracts of habitat. As a result, the immediate acquistion of habitat with the mitigation funding provided by the Applicant is not anticipated.

However, any future acquistion made with all or portions of this funding is expected to benefit scrub-jays since habitat protection and management has been identified as one of the most important conservation tasks for this species.

As stated above, the Service has made a preliminary determination that the issuance of the Permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the draft EA and Plan.

The Service will also evaluate whether the issuance of a section 10(a)(1)(B) Permit complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the Permit.

Dated: December 22, 1999.

Judy L. Jones,

Acting Regional Director.

[FR Doc. 99–33738 Filed 12–28–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Change in Administrative Jurisdiction of Navassa Island

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We are announcing the establishment of Navassa Island National Wildlife Refuge located in the Caribbean Sea, and that the Secretary of the Interior has delegated the authority for the civil administration of Navassa Island to the Director of the U.S. Fish and Wildlife Service.

FOR FURTHER INFORMATION CONTACT: Jeffery M. Donahoe, Chief, Division of Realty, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 622, Arlington, Virginia 22203; Telephone (703) 358–1713; FAX (703) 358–2223.

SUPPLEMENTARY INFORMATION: This gives public notice of the establishment of the Navassa Island National Wildlife Refuge. A Memorandum of Understanding (MOU) between the Director of the United States Fish and Wildlife Service (Service) and the Director of the Office of Insular Affairs (both within the Department of the Interior) established the refuge on April 22, 1999. On December 3, 1999, the Secretary of the Interior transferred full administrative responsibility for the island and its territorial waters from the Office of Insular Affairs to the United States Fish and Wildlife Service by Secretarial Order 3210.

We will continue to administer this area under the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–ee), the general regulations governing the National Wildlife Refuge System published in Title 50, Subchapter C, Code of Federal Regulations, and in accordance with all applicable laws, policies, and rules.

The refuge consists of all of Navassa Island located in latitude 18′25″ N and longitude 75′02″ W from Greenwich together with the full extent of its territorial sea, which currently extends outward to 12 miles. Secretarial Order 3210, dated December 3, 1999 delegated the authority over Navassa Island from the Secretary of the Interior to the Director of the Service. We took this action in furtherance of United States sovereignty over Navassa Island and to protect the unique ecosystem of Navassa Island, the adjacent coral reefs, and marine waters.

The Service, which has been managing the refuge pursuant to the MOU, will continue to manage it under all applicable laws, policies, and regulations that govern the National Wildlife Refuge System. In carrying out those responsibilities, and consistent with those authorities, we shall ensure that we manage the unique ecosystem of the refuge to preserve its character in support of the protection and conservation of the fish and wildlife in the refuge.

Dated: December 15, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–33407 Filed 12–28–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected under the Wild Bird Conservation Act of 1992. This notice is provided under section 112, paragraph 4, of the Wild Bird Conservation Act of 1992, and Title 50, of the Code of Federal Regulations, Section 15.26(c).

Applicant: Hurricane Aviaries Inc., Loxahatchee, FL. The applicant wishes to establish a cooperative breeding program for the Blue-headed macaw (*Ara couloni*). The applicant wishes to be an active participant in this program with four other private enterprises. The American Federation of Aviculture Inc. has assumed the responsibility for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of these documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203. Phone: (703/358–2095); FAX: (703/358–2298).

Dated: December 22, 1999.

Bruce Weissgold,

Acting Chief, Branch of Operations, Office of Management Authority.

[FR Doc. 99–33779 Filed 12–28–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected under the Wild Bird Conservation Act of 1992. This notice is provided under Section 112, paragraph 4, of the Wild Bird Conservation Act of 1992, and Title 50, of the Code of Federal Regulations, Section 15.26(c).

Applicant: Jerry G. Royster, Leonard, MI. The applicant wishes to establish a cooperative breeding program for the Orange-breasted Fig-parrot *(Cyclopsitta gulielmiterti),* Double-eyed Fig-parrot *(Cyclopsitta diophthalma),* Desmarest's Fig-parrot (*Psittaculirostris desmarestii*), Edward's Fig-parrot (*Psittaculirostris edwardsii*), and Salvadori's Fig-parrot

(*Psittaculirostris salvadori*). Mr. Royster wishes to be an active participant in this program with five other private individuals. The Avicultural Society of America (ASA) has assumed the responsibility for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of these documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203. Phone: (703/358–2095); FAX: (703/358–2298).

Dated: December 22, 1999.

Bruce Weissgold,

Acting Chief, Branch of Operations, Office of Management Authority.

[FR Doc. 99–33780 Filed 12–28–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Nevada Temporary Closure of Certain Public Lands Managed by the Bureau of Land Management, Las Vegas District

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Temporary closure of selected public lands in Clark County, Nevada, during the operation of the 2000 SCORE Laughlin Desert Challenge Race.

SUMMARY: The Field Office Manager of the Las Vegas District announces the temporary closure of selected public lands under its administration.

This action is being taken to help ensure public safety, prevent unnecessary environmental degradation during the official permitted running of the 2000 SCORE Laughlin Desert Challenge Race and to comply with provisions of the U.S. Fish and Wildlife Service's Biological Opinion for Speed Based Off-Highway Vehicle Events (I–5–98–F–053).

DATES: From 6 a.m. January 21, 2000 through 8 p.m. January 23, 2000 Pacific Standard Time.

Closure Area: As described below, an area within T.32 S. to T.33 S.R. 64 E. to R. 66 E.

1. The closure is a bound by STATE ROUTE #163 on the NORTH, CALIFORNIA STATE LINE on the SOUTH, US 95 on the WEST, BIG BEND DRIVE ON THE EAST.

Exceptions to the closure are: State Route 163.

2. The entire area encompassed by the designated course and all areas outside the designated course as listed in the legal description above are closed to all vehicles except Law Enforcement, Emergency Vehicles, and Official Race Vehicles. Access routes leading to the course are closed to vehicles.

3. No vehicle stopping or parking.

4. Spectators are required to remain within designated spectator area only.

5. The following regulations will be in effect for the duration of the closure:

Unless otherwise authorized no person shall:

a. Camp in any area outside of the designated spectator areas.

b. Enter any portion of the race course or any wash located within the race course.

c. Spectate or otherwise be located outside of the designated spectator area.

d. Cut or collect firewood of any kind, including dead and down wood or other vegetative material.

e. Possess and or consume any alcoholic beverage unless the person has reached the age of 21 years.

f. Presence on a public land when under the influence of alcohol or a controlled substance to a degree that may endanger oneself or another person, or damage property or public land resources, is prohibited.

g. Discharge, or use firearms, other weapons or fireworks.

h. Park, stop, or stand any vehicle outside of the designated spectator area.

i. Operate any vehicle including an off-highway vehicle (OHV), which is not legally registered for street and highway operation, including operation of such a vehicle in spectator viewing areas, along the race course, and in designated pit area.

j. Park any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property or feature. Vehicles so parked are subject to citation, removal and impoundment at owner's expense.

k. Take a vehicle through, around or beyond a restrictive sign, recognizable barricade, fence or traffic control barrier or device.

l. Fail to keep their site free of trash and litter during the period of occupancy, or fail to remove all personal equipment, trash, and litter upon departure.

m. Violate quiet hours by causing an unreasonable noise as determined by the authorized officer between the hours of 10 p.m. and 6 a.m. Pacific Standard Time.

n. Allow any pet or other animal in their care to be unrestrained at any time.

o. Fail to follow orders or directions of an authorized officer.

p. Obstruct, resist, or attempt to elude a Law Enforcement Officer or fail to follow their orders or direction.

Signs and maps directing the public to designated spectator areas will be provided by the Bureau of Land Management and the event sponsor.

The above restriction do not apply to emergency vehicles and vehicles owned by the United States, the State of Nevada or to Clark County. Vehicles under permit for operation by event participants must follow the race permit stipulations.

Operators of permitted vehicles shall maintain a maximum speed limit of 35 mph on all BLM roads and ways. Authority for closure of public lands is found in 43 CFR part 8340 subpart 8341; 43 CFR part 8360, subpart 8364.1 and 43 CFR part 8372. Persons who violate this closure order are subject to fines and or arrest as prescribed by law.

FOR FURTHER INFORMATION CONTACT: Dave Wolf, Recreation Manager or Ron Crayton, BLM Law Enforcement Ranger, BLM Las Vegas District, 4765 West Vegas Dr., Las Vegas, Nevada 89108, (702) 647–5000.

Dated: December 17, 1999.

Mark T. Morse,

Field Office Manager.

[FR Doc. 99–33723 Filed 12–28–99; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–030–1330–00]

Notice of Intent to Prepare an Environmental Impact Statement (EIS) for the proposed 3R Minerals Coal Bed Canyon mine/operation plan modification, Garfield County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare an EIS and Notice of Scoping on the proposed 3R Minerals' Coal Bed Canyon mine/operation plan modification, Garfield County, UT.

SUMMARY: Pursuant to Section 102(2) (C) of the National Environmental Policy

Act of 1969, the Bureau of Land Management (BLM), Grand Staircase-Escalante National Monument (GSENM) office, will be writing an EIS on the proposed Coal Bed Canyon Mine located within the GSENM. The proposed mine is located on 4.8 acres of BLM administered lands approximately 4 miles southwest of the town of Escalante along the Alvey Wash Road (T. 35 S., R. 2 E., Sec. 36, SE¼, SLM, Garfield County, Utah). 3R Minerals proposes to mine and separate mineral sands (*i.e.* zirconium and titanium) from the active stream channel of Alvey Wash. Primary processing of the mineral sands would occur on-site in a fenced area of approximately 100 by 150 feet. The processing pad would accommodate gravity spiral mineral separation equipment, material stockpiles, loading and hauling equipment, a water well and storage pond, a generator, and personnel trailer. Reject material (non-mineral sands) would be placed back into the wash.

Major issues include potential impacts on wildlife habitat, recreation, visual resources, and wilderness values. Alternatives identified at this time include the proposed action and the no action alternative.

DATES: Public scoping comments will be accepted on or before January 28, 2000. A public scoping open house and information meeting will be held on January 13, 2000 from 4–7 p.m. at the Escalante Community Center, 65 North 100 West, Escalante, Utah. If you have any information, data or concerns related to potential impacts of the proposed action including the issues identified above, or have suggestions for additional alternatives, please submit them to the address listed below.

ADDRESSES: Written scoping comments should be sent to: GSENM Manager, Bureau of Land Management, Grand Staircase-Escalante National Monument, 180 West 300 North, Kanab, Utah 84741, ATTN: Coal Bed Canyon Mine Plan.

Comments, including names and street addresses of respondents will be available for public review at the BLM Grand Staircase-Escalante National Monument Office and will be subject to disclosure under the Freedom of Information Act (FOIA). They may be published as part of the EIS and other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review and disclosure under the FOIA, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Paul Chapman (435) 644–4309 or e-mail: pchapman@ut.blm.gov.

SUPPLEMENTARY INFORMATION: On September 1, 1997, the Utah State Institutional Trust Lands Administration (SITLA) issued a metalliferous lease on lands located in T. 35 S. , R. 2 E. , Section 36, SLM, Garfield County, Utah. A Notice of Intent (NOI) to commence mining was submitted by 3R Minerals to SITLA on June 1, 1998. SITLA granted approval on October 5, 1998. A Notice of Intention to Commence Small Mining Operations was submitted and received by the Utah Division of Oil, Gas and Mining (UDOGM), on June 1, 1998 and accepted on July 1, 1998. On October 31, 1998, the Utah Schools and Lands Exchange Act of 1998 (Public Law 105–335) was signed by the President of the United States, in order to exchange certain federal and state lands and interests (including this parcel). This exchange was subject to valid existing rights. On January 7, 1999, the surface and mineral estate, along with the interest in the state lease was conveyed to the United States, Bureau of Land Management. BLM now administers the 3R Minerals lease under the terms and conditions set forth in the lease, the NOI approval, and SITLA rules pertaining to the lease. 3R Minerals may currently conduct operations under the terms of the original approval by SITLA and the acceptance by DOGM.

On June 15, 1999, BLM received 3R Minerals' Notice of Intent to Revise Mining Operations. Under the lease and SITLA rules, BLM as the lessor, is required to approve any proposed changes to 3R Minerals' operations that are not covered by the original approval. Such a decision is a Federal action to which the National Environmental Policy Act applies. Based upon this review, an Environmental Impact Statement is being prepared to assess potential impacts to resources reflected in the Notice of Intent to Revise Mining Operations within the Grand Staircase-Escalante National Monument.

Linda S. Colville,

Acting State Director.

[FR Doc. 99–33736 Filed 12–28–99; 8:45 am]

BILLING CODE 1330–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–BJ: GP0–0065]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 35 S., R. 4 W., accepted November 15, 1999
T. 36 S., R. 4 W., accepted November 15, 1999
Tps. 25 and 26 S., R. 13 and 14 W., accepted November 18, 1999
T. 21 S., R. 2 W., accepted November 22, 1999
T. 15 S., R. 6 W., accepted November 22, 1999
T. 16 S., R. 41 E., accepted November 24, 1999

Washington

T. 34 N., R. 2 E., accepted December 10, 1999

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey, and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515

S.W. 5th Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: December 14, 1999.

Robert D. DeViney, Jr.,

Branch of Realty and Records Services.

[FR Doc. 99–33724 Filed 12–28–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–2000–1060–JJ]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to remove stray wild horses.

SUMMARY: The Wild, Free Roaming Horse and Burro Act (Pub. L. 92–195) requires, among other things, that horses that stray from designated Herd Management Areas (HMAs) be removed. In order to accomplish that, Rawlins Field Office of the Bureau of Land Management (BLM) plans to remove 200–400 horses from an area designated as Interstate 80 (I–80) North. These horses have strayed from the nearby Stewart Creek and Lost Creek HMAs over a period of time. The area known as I–80 North contains a large percentage (greater than 50%) of private land. The removal is scheduled to begin after February 15, 2000, and conclude March 31, 2000. If weather or other conditions preclude or otherwise limit operations during this period, this action may resume after July 10, 2000, and continue until December 31, 2000.

Populations in the nearby Stewart Creek and Lost Creek HMAs will not be affected by this removal and will remain above the AMLs established for them.

Numbers presented are approximate and will be finalized by aircraft census to be conducted during January/February 2000 in the removal area and nearby HMAs.

A detailed Gather Plan and NEPA documentation for this removal is available on request from: Chuck Reed, Bureau of land Management, Rawlins Field Office, P.O. Box 2407, Rawlins, WY 82301, (307) 328–4213.

This removal action represents continued implementation of decisions previously communicated through Decision Record WY–037–EA4–121/122 dated July 11, 1994.

FOR FURTHER INFORMATION CONTACT: For further information please contact the Bureau of Land Management, Rawlins Field Office, 1300 North Third Street, P.O. Box 2407, Rawlins, WY 82301, (307) 328–4200.

Dated: December 17, 1999.

Kurt J. Kotter,

Field Manager.

[FR Doc. 99–33376 Filed 12–28–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places;Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 18, 1999. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by January 13, 2000.

Patrick Andrus,

Acting Keeper of the National Register.

COLORADO

Adams County

Union High School, 3455 W. 72nd Ave., Westminster, 99001665

Jefferson County

Queen of Heaven Orphanage Summer Camp, 20189 Cabrini Blvd., Golden vicinity, 99001666

Park County

Buckley Ranch (Ranching Resources of South Park, Colorado) Co. Rd. 59, Hartsel vicinity, 99001667

CONNECTICUT

New Haven County

Maltby—Stevens Factory Site, Address Restricted, North Branford, 99001668

INDIANA

Porter County

Nike Missile Site C47, Co. Rds. 700 N. and 600 N., Portage vicinity, 99001669

MARYLAND

Baltimore Independent City

Baltimore Grand, 401 W. Fayette St., Baltimore, 99001671

Hippodrome Theatre, 12 N. Eutaw St., Baltimore, 99001670

MICHIGAN

Hillsdale County

Trunk Line Bridge No. 237 (Highway Bridges of Michigan MPS) Burt Rd. over Silver Cr. (Ransom Township), Ransom vicinity, 99001672

Ingham County

Ash Street—Sycamore Creek Bridge (Highway Bridges of Michigan MPS), MI 36 over Sycamore Cr., Mason, 99001673

Jackson County

Denton Road—Sparks Foundation Park Pond Bridge (Highway Bridges of Michigan MPS) Denton Rd. over Sparks Foundation Park Pond, Jackson, 99001676

M–50—Sandstone Creek Bridge (Highway Bridges of Michigan MPS) 5MI 50 over Sandstone Cr. (Tompkins Township), Tompkins vicinity, 99001674

Mill Street—South Branch Raisin River Bridge (Highway Bridges of Michigan MPS) Mill St. over S. Branch Raisin River, Brooklyn, 99001675

NEW MEXICO

Bernalillo County

Hendren Building (Multi-unit Dwellings in Albuquerque, New Mexico MPS), 3001 Monte Vista Blvd. NE, Albuquerque, 99001678

Newlander Apartments (Multi-unit Dwellings in Albuquerque, New Mexico MPS), 616 Coal Ave., Albuquerque, 99001677

Lincoln County

Fort Stanton Historic District (Boundary Increase), NM 214, Capitan vicinity, 99001679

Santa Fe County

Lujan—Ortiz House, 1 mi. from NM 502 on Co. Rd. 84, Jaconita vicinity, 99001680

NEW YORK

Suffolk County

Dove, Arthur—Torr, Helen, Cottage, 30 Centershore Rd., Centerport, 99001682

Rosemary Lodge, 322 Rose Hill Rd., Southampton, 99001681

NORTH CAROLINA

Durham County

Tilley, Marcus, House, 7616 Jock Rd., Bahama, 99001684

Forsyth County

Black, George, House and Brickyard, 111 Dellabrook Rd., Winston-Salem, 99001683

OHIO

Brown County

Higginsport School, Jct. of Jackson and Gaines Sts., Higginsport, 99001685

Knox County

Gambier Historic District, Roughly bounded by OH 229, Meadow Ln., Brooklyn St. and N. Village boundary, Gambier, 99001686

Richland County

Voegele Building, 211 N. Main St., Mansfield, 99001687

SOUTH DAKOTA

Brule County

Chamberlain Bridge (Historic Bridges in South Dakota MPS) I–90 Loop over Missouri R., Chamberlain, 99001691

Clay County

South Dakota Department of Transportation Bridge No. 14–088–170 (Historic Bridges in South Dakota MPS), Local Rd. over Clay Cr. Ditch, Vermillion vicinity, 99001689

South Dakota Department of Transportation Bridge No. 14–105–209 (Historic Bridges in South Dakota MPS), Local Rd. over Chicago, Milwaukee, St. Paul and Pacific Railroad tracks, Vermillion vicinity, 99001690

South Dakota Department of Transportation Bridge No. 14–090–042 (Historic Bridges in South Dakota MPS), Local Rd. over Vermillion R., Wakonda vicinity, 99001700

Lincoln County

South Dakota Department of Transportation Bridge No. 42–103–207 (Historic Bridges in South Dakota MPS), Local Rd. over Local Cr., Beresford vicinity, 99001688

Minnehaha County

South Dakota Department of Transportation Bridge No. 50–192–132 (Historic Bridges in South Dakota MPS), Local Rd. over Big Sioux R. (Mapleton Township), Renner vicinity, 99001694

South Dakota Department of Transportation Bridge No. 50–193–086 (Historic Bridges in South Dakota MPS), Local Rd. over Big Sioux R. (Sverdrup Township), Midway vicinity, 99001695

Moody County

Sioux River Bridge (Historic Bridges in South Dakota MPS), 3rd St. over Big Sioux R., Trent, 99001696

South Dakota Department of Transportation Bridge No. 51–102–010 (Historic Bridges in South Dakota MPS), Local Rd. over Local Cr., Riverview Township vicinity, 99001693

South Dakota Department of Transportation Bridge No. 51–140–078 (Historic Bridges in South Dakota MPS), Local Rd. over Big Sioux R., Flandreau vicinity, 99001698

South Dakota Department of Transportation Bridge No. 51–051–000 (Historic Bridges in South Dakota MPS), Local Rd. over Big Sioux R., Lake Campbell Resort vicinity, 99001699

Yankton County

Pine Street Bridge (Historic Bridges in South Dakota MPS), Pine Street over Marne Cr., Yankton, 99001697

Walnut Street Bridge (Historic Bridges in South Dakota MPS), Walnut St. over Marne Cr., Yankton, 99001692

TEXAS

Gray County

White Deer Land Company Building, 116 S. Cuyler, Pampa, 99001701

A Removal has been requested for:

ARKANSAS

Hempstead County

McRae, K.G., House, 3rd and Edgewood Sts. Hope, 76000413

A request for a Move has been made for:

FLORIDA

Broward County

Sample Estate, 3161 N. Dixie Hwy., Pompano Beach, 84000834

[FR Doc. 99–33742 Filed 12–28–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States of America v. Alcoa Inc., ACX Technologies, Inc., and Golden Aluminum Company; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Sections 16(b) through (h), that a Complaint, Hold Separate Stipulation and Order, and a proposed Final Judgment were filed with the United States District Court for the District of Columbia in *United States of America* v. *Alcoa Inc., ACX Technologies, Inc., and Golden Aluminum Company,* Civil No. 99–2943 on November 5, 1999. On December 6, 1999, the United States filed a Competitive Impact Statement. The Complaint alleged that the proposed acquisition by Alcoa Inc. (''Alcoa'') of ACX Technologies, Inc.'s (''ACX'') interest in Golden Aluminum Company (''Golden'') would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, in the market for aluminum food and beverage can lid stock (''lid stock''). The proposed Final Judgment, filed at the same time as the Complaint, requires Alcoa to sell Golden's Fort Lupton, Colorado aluminum business. The proposed Final Judgment requires that the purchaser of the divested assets continue to operate them in the manufacture and sale of lid stock. The Competitive Impact Statement describes the Complaint, the proposed Final Judgment, the industry, and the remedies available to private litigants who may have been injured by the alleged violation. Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Washington, DC, and at the office of the Clerk of the United States District Court for the District of Columbia, Washington, DC. Copies of any of these materials may be obtained upon request and payment of a copying fee. These materials are also located on the Antitrust Division's web site (www.usdoj.gov/atr/cases.html).

Public comment is invited within 60 days of the date of this notice. Such comments, and response thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Roger W. Fones, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 500, Washington, DC 20530 (telephone: 202–307–6351).

Constance K. Robinson,

Director of Operations and Merger Enforcement.

Stipulation and Order

It is hereby Stipulated by and between the undersigned parties, by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though they were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

5. In the event that plaintiff withdraws its consent, as provided in paragraph 2 above, or in the event that the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court

has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that the defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein..

7. Defendants agree not to consummate their transaction before the Court has signed this Stipulation and Order.

Dated: November 5, 1999.
Respectfully submitted,
For Plaintiff
United States of America: Nina B. Hale, *Washington Bar #18776;* Laura M. Scott, Attorneys, Antitrust Division, U.S. Department of Justice, 325 Seventh St., N.W., Suite 500, Washington, DC 20004, (202) 307–6351.
For Defendant:
Alcoa, Inc., W. Randolph Smith, *DC Bar #*________, Crowell & Moring, 1001 Pennsylvania Avenue, N.W., Washington, DC 20004–2595, (202) 624–2700.
For Defendants:
ACX Technologies, Inc., and Golden Aluminum Company: W. Todd Miller, *DC Bar #414930,* Baker & Miller, 915 15th Street, Suite 1000, Washington, DC 20005–2302.

Order

It is so ordered, this ____ day of ________, 1999.

____

United States District Court Judge

Hold Separate Stipulation and Order

It is hereby *Stipulated by and between the undersigned parties, subject to approval and entry by the Court, that:*

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. ''Alcoa'' means defendant Alcoa Inc., a Pennsylvania corporation with its headquarters in Pittsburgh, Pennsylvania, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

B. ''ACX'' means ACX Technologies, Inc., a Colorado corporation with its headquarters in Golden, Colorado, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

C. ''Golden'' means Golden Aluminum Company, a wholly owned subsidiary of ACX, with two principal aluminum sheet manufacturing facilities located in Fort Lupton, Colorado, and San Antonio, Texas, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

D. ''Fort Lupton Assets'' means all assets included within Golden's Fort Lupton, Colorado operation including:

1. All tangible assets, including the Fort Lupton manufacturing facility located at 1405 E. 14th Street, Fort Lupton, Colorado 80621–0207 (''the Fort Lupton Facility'') and the real property on which the Fort Lupton Facility is situated; any facilities used for research and development activities, including Golden Engineering, AG, a Swiss company, and GAC Technology, a Colorado corporation, both of which provide engineering support to the Fort Lupton Facility (''the Engineering Facilities''), and any real property associated with those facilities, manufacturing assets relating to the Fort Lupton Facility and to the Engineering Facilities, including capital equipment, vehicles, supplies, personal property, inventory, office furniture, fixed assets and fixtures, materials, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorizations issued by any governmental organization relating to the Fort Lupton Facility and to the Engineering Facilities; all contracts, agreements, leases, commitments and understandings pertaining to the operations of the Fort Lupton Facility and of the Engineering Facilities; supply agreements; all customer lists, accounts, and credit records; and other records maintained by Golden in connection with the operations of the Fort Lupton Facility and of the Engineering Facilities;

2. All intangible assets, including but not limited to all patents, licenses and sublicenses, intellectual property, trademarks, trade names, service marks, service names, technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information Golden provides to its employees, customers, suppliers, agents or licensees in connection with the operations of the Fort Lupton Facility and of the Engineering Facilities; except that Alcoa may retain a non-exclusive, non-transferable, royalty-free license to use all patents, licenses, and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures necessary to operate the block caster at Golden's San Antonio, Texas manufacturing facility (''the San Antonio block caster''), provided, however, that if Alcoa sells the San Antonio block caster to ACX Technologies, Inc. or an affiliate of ACX Technologies, Inc., it may provide ACX Technologies, Inc. or the ACX Technologies, Inc. affiliate with a non-exclusive, non-transferable, royalty-free license for use solely in connection with the operation of the San Antonio block caster; and

3. All research data concerning historic and current research and development efforts relating to the operation of the Fort Lupton Facility and of the Engineering Facilities, including designs of experiments, and the results of unsuccessful designs and experiments.

E. ''Lid stock'' means an aluminum sheet product from which the ends, tabs and pull-off lids of food and beverage cans are made.

II. Objectives

The Final Judgment filed in this case is meant to ensure Alcoa's prompt divestiture of the Fort Lupton Assets for the purpose of maintaining a viable competitor in the manufacture and sale of lid stock to remedy the effects that the United States alleges would otherwise result from Alcoa's proposed acquisition of Golden.

This Hold Separate Stipulation and Order ensures, prior to such divestiture, that the Fort Lupton Assets, which are being divested, be maintained as an independent, economically viable, ongoing business concern, and that competition is maintained during the pendency of the divestiture.

III. Hold Separate Provisions

Until the divestiture required by the Final Judgment has been accomplished:

A. Alcoa shall preserve, maintain, and operate the Fort Lupton Assets as an independent competitor with management, research, development, production, sales and operations held entirely separate, distinct and apart from those of Alcoa. Alcoa shall not coordinate the manufacture, marketing or sale of products from the Fort Lupton

Assets with its existing lid stock business. Within twenty (20) calendar days of the filing of the Complaint in this matter, Alcoa will inform plaintiff of the steps taken to comply with this provision.

B. Alcoa shall take all steps necessary to ensure that the Fort Lupton Assets will be maintained and operated as an independent, ongoing, economically viable and active competitor in the manufacture and sale of lid stock; that the management of the Fort Lupton Assets will not be influenced by Alcoa, and that the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with the Fort Lupton Assets will be kept separate and apart from the operations of Alcoa. Alcoa's influence over the Fort Lupton Assets shall be limited to that necessary to carry out Alcoa's obligations under this Order and the Final Judgment. Alcoa may receive historical aggregate financial information (excluding capacity or pricing information) relating to the Fort Lupton Assets to the extent necessary to allow Alcoa to prepare financial reports, tax returns, personnel reports, and other necessary or legally required reports.

C. Alcoa shall use all reasonable efforts to maintain lid stock manufacturing and sales levels at the Fort Lupton Facility, and to maintain research and development activities and engineering support at the Engineering Facilities. Alcoa shall maintain at current or previously approved levels, whichever are higher, internal research and development funding, promotional, advertising, sales, technical assistance, marketing and merchandising support for the Fort Lupton Assets.

D. Alcoa shall provide and maintain sufficient working capital to maintain the Fort Lupton Assets as an economically viable, on going business.

E. Alcoa shall provide and maintain sufficient lines and sources of credit to maintain the Fort Lupton Assets as an economically viable, ongoing business.

F. Alcoa shall take all steps necessary to ensure that the Fort Lupton Facility is fully maintained in operable condition at no lower than its current rated capacity, and shall maintain and adhere to normal repair and maintenance schedules for the Fort Lupton Facility.

G. Alcoa shall not, except as part of a divestiture approved by plaintiff, remove, sell, lease, assign, transfer, pledge or otherwise dispose of or pledge as collateral for loans, any of the Fort Lupton Assets, including the intangible assets that are described in Section II of the Final Judgment.

H. Alcoa shall maintain, in accordance with sound accounting principles, separate, true, accurate and complete financial ledgers, books and records that report, on a periodic basis, such as the last business day of every month, consistent with part practices, the assets, liabilities, expenses, revenues, income, profit and loss of the Fort Lupton Assets.

1. Until such time as the Fort Lupton Assets are divested, except in the ordinary course of business or as is otherwise consistent with this Hold Separate Agreement, Alcoa shall not hire, transfer or terminate, or alter, to the detriment of any employee, any current employment or salary agreements for any Golden employees who on the date of the signing of this Agreement work for the Fort Lupton Facility, or for the Engineering Facilities, unless such individual has a written offer of employment from a third party for a like position.

J. Alcoa shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to a suitable purchaser.

K. The Hold Separate Stipulation and Order shall remain in effect until the divestiture required by the Final Judgment is complete, or until further Order of the Court. Respectfully submitted,

For Plaintiff:

United States of America: Nina B. Hale, *Washington Bar* #18776, Laura M. Scott, *Attorneys, Antitrust Division, U.S. Department of Justice, 325 Seventh St., N.W., Suite 500, Washington, DC 20004, (202) 307–6351.*

Dated this 5th day of November 1999.

For Defendant:

Alcoa, Inc.: W. Randolph Smith, *Crowell & Moring, 1001 Pennsylvania Avenue, N.W., Washington DC 20004–2595, (202) 624–2700.*

For Defendants:

ACX Technologies, Inc. and Golden Aluminum Company: W. Todd Miller, *Baker & Miller, 915 15th Street, Suite 1000, Washington, DC 20005–2302.*

Order

It is so ordered, this __________ day of ___________, 1999.

United States District Court Judge

Dated: November 5, 1999.

Respectfully submitted,

For Plaintiff United States of America Nina B. Hale *Washington Bar* #1877G, Laura M. Scott, *Attorneys, Antitrust Division, U.S. Department of Justice, 325 Seventh St., NW, Suite 500, Washington, DC 20004, (202) 307–6351.*

For Defendant Alcoa, Inc.

W. Randolph Smith *DC Bar* #356402 Crowell & Moring, 1001 Pennsylvania Avenue, NW, Washington, DC 20004–2595, (202) 624–2700.

For Defendants ACX Technologies, Inc. and Golden Aluminum Company

W. Todd Miller *DC Bar* #________ Baker & Miller, 915 15th Street, Suite 1000, Washington, DC 20005–2302.

Order

It is so ordered, this ________ day of __________, 1999.

United States District Court Judge

Final Judgment

Whereas, plaintiff, the United States of America (''United States''), filed its complaint in this action on November 5, 1999, and plaintiff and defendants, Alcoa Inc. (''Alcoa''), ACX Technologies, Inc. (''ACX''), and Golden Aluminum Company (''Golden''), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And Whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is the prompt and certain divestiture of the Fort Lupton Assets of ACX's subsidiary, Golden Aluminum Company (''Golden''), to assure that competition is not substantially lessened;

And Whereas, plaintiff requires defendant Alcoa to divest the Fort Lupton Assets for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, defendants have represented to plaintiff that the divestiture ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture or contract provisions contained below;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged,* and Decreed as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

A. ''Alcoa'' means defendant Alcoa, Inc., a Pennsylvania corporation with its headquarters in Pittsburgh, Pennsylvania, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

B. ''ACX'' means ACX Technologies, Inc., a Colorado corporation with its headquarters in Golden, Colorado, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

C. ''Golden'' means Golden Aluminum Company, a wholly owned subsidiary of ACX, with two principal aluminum sheet manufacturing facilities located in Fort Lupton, Colorado, and San Antonio, Texas, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

D. ''Fort Lupton Assets'' means all assets included within Golden's Fort Lupton, Colorado operation including:

1. All tangible assets, including the Fort Lupton manufacturing facility located at 1405 E. 14th Street, Fort Lupton, Colorado 80621–0207 (''the Fort Lupton Facility'') and the real property on which the Fort Lupton Facility is situated; any facilities used for research and development activities, including Golden Engineering, AG, a Swiss company, and GAC Technology, a Colorado corporation, both of which provide engineering support to the Fort Lupton Facility (''the Engineering Facilities''), and any real property associated with those facilities; manufacturing assets relating to the Fort Lupton Facility and to the Engineering Facilities, including capital equipment, vehicles, supplies, personal property, inventory, office furniture, fixed assets and fixtures, materials, on-site warehouses or storage facilities, and other tangible property or improvements; all licenses, permits and authorization issued by any governmental organization relating to the Fort Lupton Facility and to the Engineering Facilities; all contracts, agreements, leases, commitments and understandings pertaining to the operations of the Fort Lupton Facility and of the Engineering Facilities; supply agreements; all customers lists, accounts, and credit records; and other records maintained by Golden in connection with the operations of the Fort Lupton Facility and of the Engineering Facilities;

2. All intangible assets, including but not limited to all parents, licenses and sublicenses, intellectual property, trademarks, trade names, service marks, service names, technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information Golden provides to its employees, customers, suppliers, agents or licensees in connection with the operations of the Fort Lupton Facility and of the Engineering Facilities, except that Alcoa may retain a non-exclusive, non-transferable, royalty-free license to use all patents, licenses, and sublicenses, intellectual property, technical information, know-how, trade secrets, specifications for materials, and quality assurance and control procedures necessary to operate the block caster at Golden's San Antonio, Texas manufacturing facility (''the San Antonio block caster''), provided, however, that if Alcoa sells the San Antonio block caster to ACX Technologies, Inc. or an affiliate of ACX Technologies, Inc., it may provide ACX Technologies, Inc., or the ACX Technologies, Inc. affiliate with a non-exclusive, non-transferable, royalty-free license for use solely in connection with the operation of the San Antonio block caster; and

3. All research data concerning historic and current research and development efforts relating to the operations of the Fort Lupton Facility and of the Engineering Facilities, including designs of experiments, and the results of unsuccessful designs and experiments.

E. ''Lid stock'' means an aluminum sheet product from which the ends, tabs and pull-off lids of food and beverage cans are made.

III. Applicability

A. The provisions of this Final Judgment apply to Alcoa and ACX, as defined above, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Alcoa shall require, as a condition of the sale or other disposition of all or substantially all of the Fort Lupton Assets, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV. Divestiture of Assets

A. Alcoa is hereby ordered and directed in accordance with the terms of this Final Judgment, within sixty (60) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later, to divest the Fort Lupton Assets as an ongong business to a purchaser acceptable to the United States in its sole discretion.

B. Alcoa shall use its best efforts to accomplish the divestiture as expeditiously and timely as possible. The United States, in its sole discretion, may extend the time period for any divestiture by an additional period of time not to exceed thirty (30) calendar days.

C. In accomplishing the divestiture ordered by this Final Judgment, Alcoa promptly shall make known, by usual and customary means, the availability of the Fort Lupton Assets described in this Final Judgment. Alcoa shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Alcoa shall also offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information regarding the Fort Lupton Assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Alcoa shall make available such information to the plaintiff at the same time that such information is made available to any other person.

D. Alcoa shall provide to any purchaser of the Fort Lupton Assets information relating to the personnel involved in the manufacture and sale of lid stock in connection with the Fort Lupton Assets to enable the purchaser to make offers of employment. Alcoa shall not interfere with any negotiations by any purchaser to employ any Golden employee who works for the Fort Lupton Facility or for the Engineering Facilities, or whose principal responsibility involves the manufacture and sale of lid stock associated with the Fort Lupton Assets.

E. Alcoa shall permit prospective purchasers of the Fort Lupton Assets to have reasonable access to personnel and to make inspection of the Fort Lupton Assets; access to any and all environmental, zoning, and other permit documents and information customarily provided as part of a due diligence process.

F. Alcoa shall warrant to the purchaser of the Fort Lupton Assets that all necessary environmental, zoning and other permits relating to the Fort Lupton assets are in order in all material respects. Alcoa will not undertake, directly or indirectly, following the divestiture of the Fort Lupton Assets, any challenges to the environmental, zoning, or other permits pertaining to the operation of the Fort Lupton Assets.

G. Alcoa shall warrant to the purchaser of the Fort Lupton Assets that the Fort Lupton Assets will be operational on the date of the sale.

H. Alcoa shall not take any action, direct or indirect, that will impede in any way the operation of the Fort Lupton Assets.

1. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V of this final Judgment, shall include all of the Fort Lupton Assets, operated pursuant to the Hold Separate Stipulation and Order, and be accomplished by selling or otherwise conveying the Fort Lupton Assets to a purchaser in such a way as to satisfy the United States, in its sole discretion, that the Fort Lupton Assets can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in the manufacture and sale of lid stock. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser with respect to whom it is demonstrated to the United States' sole satisfaction that: (1) The purchaser has the capability and intent of competing effectively in the manufacture and sale of lid stock; (2) The purchaser has the managerial, operational, and financial capability to compete effectively in the manufacture and sale of lid stock; (3) None of the terms of any agreement between the purchaser and Alcoa gives Alcoa the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively; and (4) The divestiture will remedy the competitive harm alleged in the Complaint.

V. Appointment of Trustee

A. In the event that Alcoa has not divested the Fort Lupton Assets within the time specified in Section IV of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States to effect the divestiture of the Fort Lupton Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Fort Lupton Assets. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Alcoa any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the United States in its sole discretion. Alcoa shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Alcoa must be conveyed in writing to plaintiff and the trustee within ten (10) days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of Alcoa, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Alcoa and the trust shall then be terminated. The compensation of such trustee and of professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Alcoa shall use its best efforts to assist the trustee in accomplishing the required divestiture, including its best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Alcoa shall develop financial or other information relevant to the business to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Alcoa shall permit *bona fide* prospective acquirers of the Fort Lupton Assets to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestiture required by this Final Judgment. Alcoa shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment; provided however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the business to be divested.

F. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestiture; (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished; and (3) the trustee's recommendations; provided, however, that to the extent such report contains information that the trustee deems confidential, such report shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the plaintiff and to defendant Alcoa, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV and V of this Final Judgment, Alcoa or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff or the proposed divestiture. If the trustee is responsible, it shall similarly notify Alcoa. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the business to be divested that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiff of such notice, the United States, in its sole discretion, may request from Alcoa, the trustee, the proposed purchaser, or any other third party additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. Alcoa and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the plaintiff has been provided the additional information requested from Alcoa, the trustee, the proposed purchaser, or any third party, whichever is later, the United States shall provide written notice to Alcoa and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to Alcoa and the trustee that it does not object, then the divestiture may be consummated, subject only to Alcoa's limited right to object to the sale under Section V(B) of this Final Judgment. Absent written notice that the United States does not object to the proposed purchaser or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Alcoa under the provision in Section (V)(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until the divestiture has been completed whether pursuant to Section IV or Section V of this Final Judgment, Alcoa shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Section IV or Section V of this Final Judgment. Each such affidavit shall include, *inter alia,* the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Alcoa has taken to solicit a buyer for the Fort Lupton Assets and to provide required information to prospective purchasers.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Alcoa shall deliver to plaintiff an affidavit which describes in detail all actions Alcoa has taken and all steps Alcoa has implemented on an on-going basis to preserve the Fort Lupton Assets pursuant to Section VIII of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, Alcoa's efforts to maintain and operate the Fort Lupton Assets as an active competitor, maintain the management, staffing, research and development activities, sales, marketing, and pricing of the Fort Lupton Assets, and maintain the Fort Lupton Assets in operable condition at current capacity configurations. Alcoa shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in Alcoa's earlier affidavit(s) filed pursuant to Section VII(B) within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, Alcoa shall preserve all records of all efforts made to preserve the business to be divested and effect the divestiture.

VIII. Hold Separate Order

Until the divestitures required by the Final Judgment have been accomplished, Alcoa shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court and to preserve the Fort Lupton Assets. Defendants shall take no action that would jeopardize the divestiture of the Fort Lupton Assets.

IX. Financing

Alcoa is ordered and directed not to finance all or any part of any purchase by an acquirer made pursuant to Section IV or V of this Final Judgment.

X. Compliance Inspection

For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, shall be permitted:

1. Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to any matters contained in this Final Judgment and the hold Separate Stipulation and Order; and

2. Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to defendants at their principal offices, defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment and the Hold Separate Stipulation and Order.

C. No information nor any documents obtained by the means provided in Sections VII or X of this Final Judgment shall be divulged by a representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give ten (10) days notice to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. Termination

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

XIII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: ______________________________

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

____

United States District Judge

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On November 5, 1999 the United States filed a civil antitrust Complaint alleging that the proposed acquisition by Alcoa Inc. (''Alcoa'') of ACX Technologies, Inc.'s (''ACX'') interest in Golden Aluminum Company (''Golden'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that the transaction would result in Alcoa increasing its already dominant share of the aluminum food and beverage can lid stock (''lid stock'') production business in North America. Alcoa is the largest producer of lid stock in North America. Golden is a small, but low cost producer of lid stock. They compete to produce and sell the best quality lid stock at the lowest prices, and to provide the best technological, marketing, and customer support services. Alcoa and ACX have proposed a transaction that would eliminate this competition, further increase concentration in the already highly concentrated lid stock business, and further increase the market power of the dominant firm—Alcoa. The proposed transaction would make it more likely that the few remaining lid stock producers will engage in anticompetitive coordination to increase prices, reduce quality, and decrease production of lid stock.

The prayer for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) A permanent injunction preventing Alcoa from acquiring Golden from ACX.

When the Complaint was filed, the United States also filed a proposed settlement that would permit Alcoa to complete its acquisition of Golden, but requires a divestiture that will preserve competition in the relevant market. This settlement consists of a Stipulation and Order, Hold Separate Stipulation and Order, and a proposed Final Judgment.

The proposed Final Judgment orders Alcoa to divest, within sixty (60) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later, Golden's Fort Lupton Assets (as defined in the Final Judgment) as an ongoing business to an acquirer acceptable to the Antitrust Division of the Department of Justice (''DOJ''). ''Fort Lupton Assets'' means all assets included within Golden's Fort Lupton, Colorado aluminum operation including all tangible and intangible assets, and all facilities which provide engineering support to the Fort Lupton, Colorado facility.

Until such divestiture is completed, the terms of the Hold Separate Stipulation and Order entered into by the parties apply to ensure that the Fort Lupton Assets shall be maintained as an independent competitor from Alcoa.

The plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Alcoa is a Pennsylvania corporation, with its principal offices located in Pittsburgh, Pennsylvania. Alcoa is the world's largest integrated aluminum company, engaging in all phases of the aluminum business—from the mining and processing of bauxite to the production of primary aluminum and fabrication of products. In 1998, Alcoa had revenues of over $15 billion. Alcoa produces lid stock at its rolling mill located in Warrick, Indiana. Alcoa's 1998 sales of lid stock in North America were approximately $700 million.

ACX is a Colorado corporation, headquartered in Golden, Colorado. ACX owns 100% of the stock of Golden, whose primary assets are two continuous cast facilities. At its facility located in Fort Lupton, Colorado, Golden produces lid stock. Golden produces a variety of aluminum sheet products (but not lid stock) at its facility located in San Antonio, Texas. In 1998, ACX reported total sales of about $988.4 million.

On August 17, 1999, Alcoa and ACX entered into an agreement under which Alcoa would acquire all of ACX's interest in Golden. This transaction, which would increase concentration in the already highly concentrated lid stock market, precipitated the government's suit.

B. Lid Stock Market

Lid stock is a flat rolled aluminum product that is typically manufactured in a rolling mill. A typical rolling mill contains a hot mill, which performs the initial reduction of the thickness of the ingot, one or more cold mills, which finish the metal to the desired thickness and width, and a variety of ancillary equipment. Lid stock can also be produced in a continuous cast facility. In a continuous cast facility, a thin sheet of molten metal is poured onto a base and pressed between two blocks or belts to achieve the desired thickness and width.

Lid stock differs from other aluminum sheet products. Lid stock is made from a harder alloy than other aluminum sheet products, such as the sheet product from which the bodies of beverage cans are made (''can body stock''). Consequently, lid stock requires more powerful mills and more mill time to produce than can body stock and other sheet products. Lid stock is therefore more expensive to produce per pound than many other sheet products.

Lid stock is sold to can makers in large coils that are fed into lid making machines, which stamp out rings and scored circles to form the ends, tabs, and pull-off lids of food and beverage cans. Because of the metallurgical characteristics of lid stock, can makers cannot use their equipment to produce lids from can body stock or other materials, such as steel.

Can makers sell lids to food and beverage companies which used them to seal their beer, soft drink, and food cans.

The food and beverage companies cannot use other types of lids to seal their cans.

As a result, a small but significant increase in lid stock prices would not cause a significant number of customers to substitute other products for lid stock.

C. Harm to Competition as a Consequence of the Acquisition

The proposed acquisition would likely lessen competition in the manufacture and sale of lid stock. Alcoa controls over 50 percent of the aluminum can lid stock market in North America. Golden is one of only five other companies that manufactures lid stock in North America. The proposed transaction will make it more likely that the few remaining lid stock producers will engage in anticompetitive coordination to increase prices, reduce quality, and decrease production of lid stock.

The Complaint alleges that the transaction would likely have the following effects, among others: actual and potential competition between Alcoa and Golden in the lid stock market would be eliminated; competition generally in the sale and manufacture of lid stock would be lessened substantially; prices for lid stock would increase; and the quality and amount of lid stock produced would decrease.

III. Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects of the acquisition of Golden by Alcoa.

The proposed Final Judgment provides that Alcoa must divest, within sixty (60) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later, Golden's Fort Lupton Assets as an ongoing business to an acquirer acceptable to DOJ. If defendants fail to divest the Fort Lupton Assets, a trustee (selected by DOJ) will be appointed.

The Final Judgment provides that Alcoa will pay all costs and expenses of the trustee. After his or her other appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six (6) months, if the divestiture has not been accomplished, the trustee and the parties will have the opportunity to make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the Final Judgment, including extending the trust or the term of the trustee's appointment.

Divestiture of the Fort Lupton Assets preserves competition because it will restore the lid stock market to a structure that existed prior to the acquisition and will preserve the existence of an independent competitor. Thus, the divestiture will preserve and encourage ongoing competition in the production and sale of lid stock.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register. Written comments should be submitted to: Roger W. Fones, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 500, Washington, DC. 20004.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants Alcoa, ACX and Golden.

The United States is satisfied that the divestiture of the described assets specified in the proposed Final Judgment will encourage viable competition in the production and sale of lid stock. The United States is satisfied that the proposed relief will prevent the acquisition from having anticompetitive effects in the market, The divestiture of the Fort Lupton Assets will restore the lid stock market to a structure that existed prior to the acquisition and will preserve the existence of an independent competitor.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making the determination, the court *may* consider.

> (1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See*

United States v. *Microsoft,* 56 F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extending proceedings which with have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [1] Rather,

> absent a showing to corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statements and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court, a court may not ''engage in an unrestricted evaluation of what relief would best serve the Public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988); *quoting United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981); *see also, Microsoft,* 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that

> [t]the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is '*within the reaches of the public interest.*' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive competitive effect of a particular practice or whether it mandates certainty of the free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved on even if it falls short of the remedy the court impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest' (citations omitted).''[3]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: December 6, 1999.

For Plaintiff United States of America:

Respectfully submitted,

Nina B. Hale,

Washington Bar #18776.

Laura M. Scott,

Virginia Bar #*36587.*

Trial Attorneys, U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW, Suite 500, Washington, DC 20004, 202–307–0892 202–307–2441 (Facsimile).

[FR Doc. 99–33410 Filed 12–28–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Registration

By Notice dated June 8, 1999, and published in the **Federal Register** on July 7, 1999, (64 FR 36718), Roche Diagnostics Corporation, 9115 Hague Road, Indianapolis, Indiana 46250, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Phencyclidine (7471)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Morphine	II

Roche Diagnostics Corporation plans to manufacture small quantities of the above listed controlled substances for incorporation in drug of abuse detection kits.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Roche Diagnostics Corporation to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Roche Diagnostics Corporation to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and review of the company's background and history. 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: December 9, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–33817 Filed 12–28–99; 8:45 am]

BILLING CODE 4410–09–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

December 21, 1999.

TIME AND DATE: 10:00 a.m., Thursday, January 6, 2000.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Martin Marietta Aggregates, Docket No. SE 98–156–M (Issues include whether the judge erred in finding that a miner's negligence was not imputable to the operator for penalty assessment and unwarrantable failure purposes because the miner was not an agent of the operator.)

Any person attending an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance

[1] 119 Cong. Rec. 244598 (1973). *See also United States* v. *Gillette Co.,* 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[2] *United States* v. *Bechtel*, 648 F.2d at 666 (internal citations omitted) (emphasis added); *see United States* v. *BNS, Inc.,* 858 F.2d at 463; *United States* v. *National Broadcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette,* 406 F. Supp. at 716. *See also United States.* v. *American Cyanamid Co.,* 719 F.2d 558, 565 (2d Cir. 1983).

[3] *United States* v. *American Tel & Tel., Co.,* 552 F. Supp. 131, 150 (D.C.C. 1982), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983), *quoting Gillette,* 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.,* 605 F. Supp. 619 (W.D. Ky. 1985).

of those needs. Subject to 29 C.F.R. §§ 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 99–33928 Filed 12–27–99; 10:04 am]

BILLING CODE 6735–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to conduct a Survey of Customer Satisfaction at the National Personnel Records Center (Military Personnel Records [MPR] facility) of the National Archives and Records Administration. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before February 28, 2000 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 3200, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–6913; or electronically mailed to tamee.fechhelm@arch2.nara.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730, or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways, including the use of information technology, to minimize the burden of the collection of information on respondents. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: National Personnel Records Center (NPRC) Survey of Customer Satisfaction.

OMB number: 3095–00XX.

Agency form number: N/A.

Type of review: Regular.

Affected public: Federal, state and local government agencies, veterans, and individuals who write the Military Personnel Records (MPR) facility for information from or copies of official military personnel files.

Estimated number of respondents: 7,800.

Estimated time per response: 10 minutes.

Frequency of response: On occasion (when respondent writes to MPR requesting information from official military personnel files).

Estimated total annual burden hours: 1,300 hours.

Abstract: The information collection is prescribed by EO 12862 issued September 11, 1993, which requires Federal agencies to survey their customers concerning customer service. The general purpose of this data collection is to initially support the business process reengineering (BPR) of the MPR reference service process and then provide MPR management with an ongoing mechanism for monitoring customer satisfaction. In particular, the purpose of the proposed National Personnel Records Center (NPRC) Survey of Customer Satisfaction is to (1) provide baseline data concerning customer satisfaction with MPR's reference service process, (2) identify areas within the reference service process for improvement, and (3) provide MPR management with customer feedback on the effectiveness of BPR initiatives designed to improve customer service as they are implemented. In addition to supporting the BPR effort, the proposed National Personnel Records Center (NPRC) Survey of Customer Satisfaction will help NARA in responding to performance planning and reporting requirements contained in the Government Performance and Results Act (GPRA).

Dated: December 21, 1999.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 99–33813 Filed 12–28–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before February 14, 2000. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Commerce, Bureau of the Census (N1–29–99–7, 2 items, 1 temporary item). Duplicate copies of 1970 decennial census planning and management files retained in field offices for quick reference. Records include copies of questionnaires, directives and manuals, meeting notes, correspondence, and evaluation reports. Recordkeeping copies of these files are proposed for permanent retention.

2. Department of Commerce, Office of the Secretary and Office of the General Counsel (N1–40–99–1, 8 items, 6 temporary items). Files of the General Counsel dating from 1950 through 1968 are proposed for disposal. Included are routine administrative and general subject files, Oil Import Appeals Board case files accumulated by the Department's representative to the Board, working files of attorneys, copies of decided Civil Aeronautics Board dockets, and Business and Defense Services Administration (BDSA) case files documenting routine company audits and security investigations of firms and individuals performed under the provisions of the Defense Production Act. Files proposed for permanent retention date from 1913 to 1961 and include BDSA general subject files and correspondence, memorandums, and reports dealing with matters of domestic and international significance accumulated by the Office of the Secretary of Commerce.

3. Department of Education, Office of Student Financial Assistance (N1–441–00–1, 9 items, 9 temporary items). Paper and electronic records compiled by the Institutional Participation Oversight Service during the evaluation of applications from institutions seeking to participate in student financial assistance programs authorized by Title IV of the Higher Education Act of 1965, as amended. Records include application case files for institutions, correspondence and other documents relating to applications and program participation agreements, financial statement files, audit report files, and program review files. Also included are electronic copies of documents created using electronic mail and word processing.

4. Department of Housing and Urban Development, Office of Community Planning and Development (N1–207–00–1, 1 item, 1 temporary item). Forms, checklists, correspondence, and related materials used to determine if underutilized or surplus Federal property is suitable for leasing to organizations assisting the homeless.

5. Department of Justice, Federal Bureau of Investigation (N1–65–00–1, 1 item, 1 temporary item). Audiotapes of incoming telephone messages to the FBI captured by switchboard monitoring and recording systems. Tapes of messages containing no information of continuing value are proposed for disposal. Audiotapes with information concerning emergencies, threats, or criminal activity are filed in the appropriate case file and disposed of in accordance with the NARA-approved disposition instructions for the file.

6. Department of Justice, Immigration and Naturalization Service (N1–85–99–6, 9 items, 8 temporary items). Records of the Office of Internal Audit including subject files, files concerning reviews and studies of agency programs, and investigative case files concerning allegations and investigations of employee misconduct. Also included are electronic copies of documents created using electronic mail and word processing. Significant investigative case files are proposed for permanent retention.

7. Department of Labor, Employment and Training Administration (N1–369–00–1, 12 items, 12 temporary items). Records relating to the administration of the Job Training Partnership Act. Included are agreements, biannual state planning files, grant files, and electronic copies of documents created using electronic mail and word processing.

8. Environmental Protection Agency, Office of Air and Radiation (N1–412–99–9, 2 items, 2 temporary items). Emission Factors Program test records, including electronic copies of records created using electronic mail and word processing. Records consist of raw data and test results, which are used for the development of models for estimating in-use emission factors for highway vehicles.

9. Environmental Protection Agency, Agency-wide (N1–412–99–16, 3 items, 2 temporary items). Records accumulated pursuant to the Administrative Procedures Act documenting pre-regulatory and non-regulatory risk management decisions including meeting notes and summaries, correspondence, press releases, reports, and public comments. Electronic copies of records created using electronic mail and office automation applications are proposed for disposal as are paper records that have been microfilmed. Microfilm copies are proposed for permanent retention. Paper records that

have not been microfilmed are also proposed for permanent retention.

10. Environmental Protection Agency, Office of Air and Radiation (N1–412–00–7, 3 items, 3 temporary items). Forms and related records verifying that motor vehicles were legally imported into the United States, including electronic copies of records created using electronic mail and word processing.

11. National Aeronautics and Space Administration, Agency-wide (N1–255–00–2, 6 items, 6 temporary items). Training records documenting employee participation in agency-required training for technical certification or to meet contract requirements. Records include rosters, correspondence, certification letters, and electronic copies of records created using electronic mail and word processing.

12. Nuclear Regulatory Commission, Office of Commission Appellate Adjudication (N1–431–99–9, 13 items, 10 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) accumulated by the Office of Commission Appellate Adjudication, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. The electronic recordkeeping copies of draft memorandum and order files along with office program management and operational files are proposed for disposal as are paper files that pre-date ADAMS. Records proposed for permanent retention include recordkeeping copies of informational legal memoranda prepared for Commissioners, no-action memoranda, and legal memoranda pertaining to cases monitored by the Office.

13. Nuclear Regulatory Commission, Office of the Inspector General (N1–431–00–1, 36 items, 25 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) accumulated by the Inspector General, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. The electronic recordkeeping copies of audit case files are proposed for disposal as are paper copies of these records that pre-date ADAMS. Also proposed for disposal are electronic recordkeeping copies of such files as records of committees and conferences for which NRC is not the sponsor, program correspondence accumulated below the Office director level, and routine correspondence. Paper copies of these records were previously approved for disposal. Electronic recordkeeping copies of public release versions of final investigative reports and of investigative documents from cases that lack historical value are proposed for disposal as well. Recordkeeping copies of investigative case files and final reports are maintained in paper form and are included in Disposition Job No. N1–431–00–2 (see below). Records proposed for permanent retention include recordkeeping copies of such files as program correspondence accumulated at the Office director level, records of committees and conferences sponsored by NRC, copies of final investigation reports made publicly available, and rulemaking files. This schedule also proposes minor changes in the disposition instructions for paper copies of committee and conference records, which were previously scheduled.

14. Nuclear Regulatory Commission, Office of the Inspector General (N1–431–00–2, 5 items, 3 temporary items). Records relating to investigations of alleged fraud, waste, abuse, and violations of laws and regulations. Records proposed for disposal include investigation case files that lack historical value and files containing allegations and information of an investigative nature that do not result in formal investigations. Also proposed for disposal are electronic records created using office automation tools used to create paper records. Records proposed for permanent retention include paper copies of final investigation reports and investigation case files that pertain to high ranking officials, attract national or regional media attention, or result in congressional investigations or substantive changes in agency policies and procedures.

15. Nuclear Regulatory Commission, Office of Incident Response Operations (N1–431–00–3, 17 items, 10 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) accumulated by the Office of Incident Response Operations, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. The electronic recordkeeping copies of correspondence files that document routine program development, management, and operational functions are proposed for disposal as are paper files that pre-date ADAMS. Records proposed for permanent retention include record-keeping copies of correspondence files that document policy-making decisions, significant management functions, and unusual occurrences or events that are highly significant or result in major changes in regulatory activities.

16. Nuclear Regulatory Commission, Office of Administration (N1–431–00–4, 105 items, 88 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) accumulated by the Office of Administration, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. Proposed for disposal are electronic recordkeeping copies of such records as documents published in the **Federal Register**, files relating to committees and conferences for which NRC is not the sponsor, correspondence files accumulated below the Office director level, and systems security files. Paper copies of these records were previously approved for disposal. Series proposed for permanent retention include electronic recordkeeping copies of files relating to directives, records relating to committees and conferences sponsored by the agency, and correspondence files accumulated at the Office director level. This schedule also proposes minor changes in the disposition instructions for the paper copies of several series that were previously scheduled, such as committee and conference records and copies of documents published in the **Federal Register**.

17. Nuclear Regulatory Commission, Office of Enforcement (N1–431–00–5, 44 items, 34 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) accumulated by the Office of Enforcement, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. The electronic recordkeeping copies of discrimination case files and enforcement action case files that lack historical value are proposed for disposal along with paper copies of these records that pre-date ADAMS. Also proposed for disposal are electronic recordkeeping copies of files relating to committees and conferences for which NRC is not the sponsor, program correspondence files accumulated below the Office director level, and routine correspondence files. Paper copies of these records were previously approved for disposal. Records proposed for permanent retention include recordkeeping copies of files related to significant enforcement actions and files relating to

committees and conferences sponsored by NRC. This schedule also proposes minor changes in the disposition instructions for paper copies of committee and conference records, which were previously scheduled.

18. Nuclear Regulatory Commission, Office of the Executive Director for Operations (N1–431–00–6, 28 items, 20 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) accumulated by the Office of the Executive Director of Operations, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. Proposed for disposal are electronic recordkeeping copies of files relating to committees and conferences for which NRC is not the sponsor, program correspondence files accumulated below the Office director level, and routine program correspondence files. Paper copies of these records were previously approved for disposal. Records proposed for permanent retention include recordkeeping copies of the Executive Director of Operation's action item files, files relating to committees and conferences sponsored by NRC, and program correspondence files accumulated at the Office director level. This schedule also proposes minor changes in the disposition instructions for paper copies of committee and conference records, which were previously scheduled.

19. Nuclear Regulatory Commission, Office of the Chief Financial Officer (N1–431–00–7, 42 items, 31 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) accumulated by the Office of the Chief Financial Officer, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. The electronic recordkeeping copies of files that identify manpower, contractual, or other costs used to develop and support fee determinations are proposed for disposal as are paper copies of these records that pre-date ADAMS. Also proposed for disposal are electronic recordkeeping copies of working papers and background materials relating to budgets, records relating to committees and conferences for which NRC is not the sponsor, program correspondence files accumulated below the Office director level, and routine program correspondence files. Paper copies of these records were previously approved for disposal. Records proposed for permanent retention include recordkeeping copies of files relating to committees and conferences sponsored by NRC, program correspondence accumulated at the Office director level, and budget estimates and justifications. This schedule also proposes minor changes in the disposition instructions for paper copies of committee and conference records, which were previously scheduled.

20. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation (N1–431–00–8, 86 items, 71 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) accumulated by the Office of Nuclear Reactor Regulation, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. The electronic recordkeeping copies of such files as licensing examinations, general correspondence concerning licensing matters, and files on inspections of vendor facilities are proposed for disposal as are paper copies of these records that pre-date ADAMS. Also proposed for disposal are electronic recordkeeping copies of such files as allegation cases, antitrust cases, records relating to committees and conferences for which NRC is not the sponsor, program correspondence accumulated below the Office director level, and files on applicants for licenses. Paper copies of these records were previously approved for disposal. Records proposed for permanent retention include recordkeeping copies of such files as records relating to committees and conferences for which NRC is the sponsor, program correspondence accumulated at the Office director level, inspection manuals, and nuclear power plant docket files. This schedule also proposes minor changes in the disposition instructions for paper copies of such files as allegation cases, reports submitted by vendors, and committee and conference records, which were previously scheduled.

21. Nuclear Regulatory Commission, Advisory Committee on Reactor Safeguards (N1–431–00–9, 59 items, 39 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) accumulated by the Advisory Committee on Reactor Safeguards, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. The electronic recordkeeping copies of general files accumulated by Committee members are proposed for disposal as are paper copies of these records that pre-date ADAMS. Also proposed for disposal are electronic recordkeeping copies of personnel files on Committee members and consultants, records that pertain to committees and conferences for which NRC is not the sponsor, and nuclear power plant docket files. Paper copies of these records were previously approved for disposal. Records proposed for permanent retention include recordkeeping copies of meeting files, annual reports, files relating to regulations, and case files on individual nuclear reactors. This schedule also proposes minor changes in the disposition instructions for paper copies of such records as meeting files, personnel files, annual reports, and committee and conference records, which were previously scheduled.

22. Nuclear Regulatory Commission, Advisory Committee on Nuclear Waste (N1–431–00–10, 54 items, 35 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) accumulated by the Advisory Committee on Nuclear Waste, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. The electronic recordkeeping copies of general files accumulated by Committee members and personnel files of consultants are proposed for disposal as are paper copies of these records that pre-date ADAMS. Also proposed for disposal are electronic recordkeeping copies of personnel files of Committee members, records of committees and conference for which NRC is not the sponsor, and waste management licensing files. Paper copies of these records were previously approved for disposal. Records proposed for permanent retention include recordkeeping copies of such files as transcripts of Committee meetings and other records relating to meetings, project case files, and correspondence accumulated by consultants. This schedule also proposes minor changes in the disposition instructions for paper copies of such records as meeting files, project case files, committee and conference records, and consultant correspondence files, which were previously scheduled.

23. Nuclear Regulatory Commission, Office of Investigations (N1–431–00–11, 3 items, 3 temporary items). Logs and other records relating to confidential sources that provide information to the agency. Also included are electronic records created using office automation tools, including word processing

documents and electronic mail messages, that are used to create paper records.

24. Nuclear Regulatory Commission, Office of Investigations (N1–431–00–12, 30 items, 19 temporary items). Electronic records in the Commission's Agency-wide Document Access and Management System (ADAMS) accumulated by the Office of Investigations, including electronic copies of records created using office automation tools and records that are used to create ADAMS portable document format files. Electronic recordkeeping copies of investigative case files that lack significance, routine correspondence files, and program correspondence accumulated below the Office director level are proposed for disposal. Paper copies of these records were previously approved for disposal. Proposed for permanent retention are recordkeeping copies of such files as legal interpretations, significant investigative case files, manuals and other records that pertain to procedures for investigations, and program correspondence accumulated at the Office director level. This schedule also proposes minor revisions in the disposition instructions for paper copies of such records as investigative case files and investigative procedures files, which were previously scheduled.

25. United States Trade Representative, Agency-wide (N1–364–97–1, 4 items, 4 temporary items). Word processing records for the period 1986 to 1993 created on the Data General computer system. The records include spreadsheets, calendars, word processing documents restored from backup tapes, and backup tapes. Paper copies of monthly calendars of high officials were previously approved for permanent retention. Paper copies of word processing documents that were Federal records were produced and placed in the agency's official recordkeeping system, which was previously approved as permanent.

Dated: December 22, 1999.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–33814 Filed 12–28–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Wednesday, January 5, 2000.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: The first item is Open to the Public. The last item is closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

7216 Highway Accident Report: Greyhound Motorcoach Run-Off-the-Road Accident, Burnt Cabins, Pennsylvania, on June 20, 1998.

7217 Proposed Safety Recommendation: Regarding the Use of Medication when Operating Vehicles.

7127 Opinion and Order: *Administrator* v. *Kraft,* Docket SE–15152; disposition of the Administrator's appeal.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodation should contact Mrs. Barbara Bush at (202) 314–6220 by Monday, January 3, 2000.

FOR MORE INFORMATION CONTACT: Rhonda Underwood (202) 314–6065.

Dated: December 27, 1999.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 99–33929 Filed 12–27–99; 11:27 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

Commonwealth Edison Company and MidAmerican Energy Company, Quad Cities Nuclear Power Station, Units 1 and 2; Notice of Consideration of Approval of Application Regarding Proposed Change in Shareholders of MidAmerican Energy Holdings Company Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of Facility Operating Licenses Nos. DPR–29 and DPR–30, for the Quad Cities Nuclear Power Station, Units 1 and 2 (Quad Cities), respectively, to the extent currently held by MidAmerican Energy Company (MidAmerican), as a co-owner of Quad Cities.

According to the application for approval by MidAmerican, all of the stock of MidAmerican Energy Holdings Company (MEHC), the parent company of MidAmerican, is to be acquired by a small group of investors. This group of investors consists of Berkshire Hathaway, Inc. and/or subsidiaries thereof; David L. Sokol, the Chairman and Chief Executive Officer of MEHC; and Walter Scott, MEHC's largest individual shareholder, and/or certain Scott family interests; and potentially other members of MEHC's management. Following the acquisition, Commonwealth Edison Company (ComEd) and MidAmerican would remain as the licensees for Quad Cities. ComEd would continue to own 75% of the facility, be exclusively responsible for the operation and maintenance of Quad Cities, and be an agent for MidAmerican. MidAmerican would continue to hold a 25% ownership interest in Quad Cities. The application proposes no changes to the financial arrangements and obligations of ComEd and MidAmerican with respect to Quad Cities, including decommissioning funding responsibilities. In addition, no physical changes to the Quad Cities facility or operational changes are being proposed in the application. No direct transfer of the licenses would result from the proposed acquisition of MEHC stock. The application seeks consent by the Commission to the extent the proposed acquisition would effect an indirect transfer of the Quad Cities licenses, as held by MidAmerican, under 10 CFR 50.80.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the underlying transaction effecting the indirect transfer will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By January 18, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, ‘‘Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License

Transfer Applications,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Roy P. Lessy, Jr., Akin, Gump, Strauss, Hauer & Feld, L.L.P., 1333 New Hampshire Avenue, NW, Suite 400, Washington, DC, 20036, telephone (202) 887–4500, fax (202) 995–7763, e-mail *Rlessy@akingump.com;* John A. Rasmussen, Jr., Senior Vice President and General Counsel, MidAmerican Energy Company, 666 Grand Avenue, P.O. Box 657, Des Moines, Iowa 50303, telephone (515) 242–4085, fax (515) 242–4261, e-mail *jarasmussen@midamerican.com;* Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for license transfer cases only: OGCLT@nrc.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by January 28, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application and related cover letters dated November 15, 1999, and previous related letters dated November 2, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 21st day of December 1999.

For the Nuclear Regulatory Commission.

S. Singh Bajwa,

Director, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–33680 Filed 12–28–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–313]

Entergy Operations, Inc. Arkansas Nuclear One, Unit No. 1; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering issuance of an amendment to Facility Operating License No. DRP–51, issued to Entergy Operations, Inc. (the licensee), for operation of Arkansas Nuclear One, Unit 1 (ANO–1) located in Pope County, Arkansas.

This proposed change would amend Technical Specification (TS) 4.18.5.b, ''Steam Generator Tubing Surveillance—Acceptance Criteria,'' to allow tube 110/60 to remain inservice through the current operating cycle (Cycle 16) with two axial indications that have potential through wall depths greater than the plugging limit. The axial indications are located in the roll transition region and are contained within the upper tubesheet.

The licensee requested that this proposed amendment be processed as an exigent request, pursuant to Section 50.91(a)(6) of Title 10 of the Code of Federal Regulations (10 CFR). The exigency is created by the inability of ANO–1 to fully comply with TS 4.18.5.b. With ANO–1 operating at 100 percent power, members of the licensee's technical staff generated a condition report (CR) that questioned the integrity of an individual steam generator tube that was currently inservice in the ''A'' steam generator. This CR documented that during a review of eddy current data taken during the last refueling outage, it was identified that steam generator tube 110/60 contained two axial indications in the upper roll transition area that exceeded the tube plugging limit. However, the licensee failed to repair this tube through means of either rerolling or plugging. TS 4.18.5.b indicates that the steam generator shall be demonstrated operable following a steam generator inspection after completing repair activities for all tubes that have indications that exceed the plugging limit. As a result, the ''A'' steam generator was considered inoperable due to the failure to take action after completion of the surveillance and TS 3.1.1.2, ''Reactor Coolant System—Steam Generators'' was entered. This TS has no associated required action for an inoperable steam generator. Therefore, TS Limiting Condition for Operation (LCO) 3.0.3 was entered, as appropriate, to address this condition. TS LCO 3.0.3 requires, within one hour, that action be taken to place the unit in an operating condition in which the TS does not apply through the initiation of a plant shutdown.

Based on the circumstances described above, the NRC verbally issued a Notice of Enforcement Discretion (NOED) on December 15, 1999. The NOED was documented by letter dated December 17, 1999. The NOED expressed the NRC's intention to exercise discretion not to enforce compliance with TS LCO 3.0.3 and TS 3.1.1.2 until the NRC staff acts on the licensee's exigent TS amendment request to revise TS 4.18.5.b with a footnote to address continued operation during the remainder of this fuel cycle with tube 110/60 inservice. The licensee submitted the exigent TS amendment request on December 16, 1999.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves 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. 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:

An evaluation of the proposed change has been performed in accordance with 10 CFR 50.91(a)(1) regarding no significant hazards considerations using the standards in 10 CFR 50.92(c). A discussion of these standards as they relate to this amendment request follows:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The OTSGs [Once Through Steam Generators] are used to remove heat from the reactor coolant system (RCS) during normal operation and during accident conditions. The OTSG tubing forms a substantial portion of the reactor coolant pressure boundary. An OTSG tube failure is a violation of the reactor coolant pressure boundary and is a specific accident analyzed in the ANO–1 Safety Analysis Report (SAR).

The purpose of the periodic surveillance performed on the OTSGs in accordance with ANO–1 Technical Specification 4.18 is to ensure that the structural integrity of this portion of the RCS will be maintained. The technical specification plugging limit of 40% of the nominal tube wall thickness requires tubes to be repaired or removed from service because the tube may become unserviceable prior to the next inspection. Unserviceable is defined in the technical specifications as the condition of a tube if it leaks or contains a defect large enough to affect its structural integrity in the event of an operating basis earthquake, a loss-of-coolant accident, or a steam line break. Of these accidents, the most sever condition with respect to axial cracking in the upper roll transition (URT) of a tube within the tubesheet is a main steam line break (MSLB). During this event the differential pressure across the tube could be as high as 2500 psid [pounds per square inch differential]. The rupture of a tube during this event could permit the flow of reactor coolant into the secondary system thus bypassing the containment.

From testing performed on simulated flaws within the tubesheet it has been shown that the axial indications within the upper tube sheet left in service during cycle 16 do not represent structurally significant flaws which would increase probability of a tube failure beyond that currently assumed in the ANO–1 SAR.

Burst tests were conducted on tubing with simulated flaws within the tubesheet. In these tests, through-wall holes of varying sizes up to 0.5 inch in diameter were drilled in test specimens. The flawed specimen tubes were then inserted into a simulated tubesheet and pressurized. In all cases the tube burst away from the flaw in that portion of the tube that was outside the tubesheet. The size of these simulated flaws bound the indications left in service within the upper tubesheet during 1R15 [refueling outage following the completion of operating cycle 15]. These tests demonstrate for flaws similar to the axial indications in the ANO–1 upper tubesheet that the tubes will not fail at this location under accident conditions.

The dose consequences of a MSLB accident are analyzed in the ANO–1 accident analysis. This analysis assumes a 1 gpm [gallon per minute] OTSG tube leak and that the unit has been operating with 1% defective fuel. The postulated accident induced leak rate contribution at the end of cycle from these indications is negligible.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The OTSGs are passive components. The intent of the technical specification surveillance requirements is being met by this change in that adequate structural and leakage integrity will be maintained. The proposed change introduces no new modes of plant operation.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety.

The ANO–1 Technical Specification Bases specify that the surveillance requirements (which includes the plugging limit) are to ensure the structural integrity of this portion of the RCS pressure boundary. The technical specification plugging limit of 40% of the nominal tube wall thickness requires tubes to be repaired or removed from service because the tube may become unserviceable prior to the next inspection. Unserviceable is defined in the technical specifications as the condition of a tube if it leaks or contains a defect large enough to affect its structural integrity in the event of an operating basis earthquake, a loss-of-coolant accident, or a MSLB. Of these accidents the most severe condition with respect to flaws within the tubesheet is the MSLB.

Testing of simulated through wall flaws of up to 0.5 inch in diameter within a tubesheet showed that the tubes always failed outside of the tubesheet. Thus the structural requirement of the bases of the surveillance specification is satisfied.

Leakage under accident conditions would be limited due to the small size of the flaws and would be low enough to ensure offsite dose limits are not exceeded.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 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 14-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 14-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. Should the Commission take this action, it will publish in the **Federal Register** a notice of 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 Administrative 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 6D59, 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 hearing and petitions for leave to intervene is discussed below.

By January 12, 2000, 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 accessible electronically through ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). 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 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 the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, 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 Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 16, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 22nd day of December 1999.

For the Nuclear Regulatory Commission.

M. Christopher Nolan,

Project Manager, Section 1, Project Directorate IV & Decommissioning Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–33777 Filed 12–28–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Licensing Support Network; Advisory Review Panel

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The Licensing Support Network Advisory Review Panel (LSNARP) will hold its next meeting on Wednesday, February 23, 2000, at the Alexis Park Hotel located at 375 E. Harmon, Las Vegas, NV. The meeting will be open to the public pursuant to the Federal Advisory Committee Act (Pub. L. 94–463, 86 Stat. 770–776).

Agenda: The meeting will be held from 8:30 a.m. to 5 p.m. on Wednesday, February 23, 2000. The purpose of the meeting is to discuss issues concerning the design and operation of the Licensing Support Network (LSN). The LSN is an internet-based electronic discovery database being developed to aid the NRC in complying with the schedule for decision on the construction authorization for the high-level waste repository contained in Section 114(d) of the Nuclear Waste Policy Act of 1982, as amended.

SUPPLEMENTARY INFORMATION: In 1998, the NRC Rules of Practice in 10 CFR Part 2, Subpart J, were modified to provide for the creation and operation of the LSN, an internet-based technological solution to the submission and management of records and documents relating to the licensing of a geologic repository for the disposal of high-level radioactive waste. (63 FR 71729.) Pursuant to 10 CFR 2.1011(d), the agency has chartered the LSNARP, an advisory committee that provides advice to the NRC on fundamental issues relating to LSN design, operation, maintenance, and compliance monitoring. At the February 23, 2000 LSNARP meeting, a principal topic for discussion will be the evaluation of alternative system configuration designs developed by the LSNARP's Technical Working Group to identify which alternative(s) the LSNARP will recommend or endorse to the Commission.

FOR FURTHER INFORMATION CONTACT: U.S. Nuclear Regulatory Commission, Atomic Safety and Licensing Board Panel, Mail Stop T–3 F23, Washington, DC 20555–0001; Attn: John C. Hoyle (telephone 301–415–7467; e-mail JXH5@NRC.GOV) or Jack G. Whetstine (telephone 301–415–7391; e-mail JGW@NRC.GOV).

Public Participation: Interested persons may make oral presentations to the LSNARP or file written statements. An oral presentations request should be made to one of the contact persons listed above as far in advance as practicable so that appropriate arrangements can be made.

Dated: December 22, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99–33778 Filed 12–28–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting; Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of December 27, 1999, January 3, 10, and 17, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 27

There are no meetings scheduled for the Week of December 27.

Week of January 3—Tentative

Wednesday, January 5

9:55 a.m.
Affirmation Session (Public Meeting) (if needed)

Week of January 10—Tentative

Monday, January 10

10:00 a.m.
Meeting with D.C. Cook (Public Meeting) (Contact: John Stang, 301–415–1345)

Tuesday, January 11

9:30 a.m.
Briefing on Status of Research Programs, Performance, and Plans (including Status of Thermo-Hydraulics) (Public Meeting) (Contact: Jocelyn Mitchell, 301–415–5289)

Wednesday, January 12

9:55 a.m.
Affirmation Session (Public Meeting) (if needed)

10:00 a.m.
Briefing on Status of NRR Programs, Performance, and Plans (Public Meeting) (Contact: Mike Case, 301–415–1134)

Week of January 17—Tentative

Wednesday, January 19

9:30 a.m.
Discussion of Management Issues (Closed—Ex. 2 & 6)

Thursday, January 20

9:55 a.m.
Affirmation Session (Public Meeting) (if needed)

10:00 a.m.
Briefing on Status of CIO Programs, Performance, and Plans (Public Meeting) (Contact: Donnie Grimsley, 301–415–8702)

Friday, January 21

10 a.m.
Briefing on Native American, State of Nevada, and Affected Units of Local Governments Representratives Responses to DOE's Draft Environmental Impact Statement (EIS) for a proposed HLW Geologic Repository (Public Meeting)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings can (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMAITON: Bill Hill (301) 415–1661.

ADDITIONAL INFORMATION: By a vote of 5–0 on December 22, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's Rules that ''Affirmation of GPU Nuclear Corporation, Docket No. 50–219, OLA–2, Memorandum and Order Terminating Proceeding), LBP 99–45 (Dec 15, 1999)'' and ''Affirmation of Niagara Mohawk Power Corp. et al. (Nine Mile Point, Units 1 & 2), Docket Nos. 50–220 and 50–410'' (PUBLIC MEETING) be held on December 22, and on less than one week's notice to the public.

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The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: December 23, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–33890 Filed 12–23–99; 4:34 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 4, 1999, through December 17, 1999. The last biweekly notice was published on December 15, 1999 (64 FR 70077).

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 Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By January 28, 2000, 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 electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). 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: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (*Project Director*): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. 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 electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: November 22, 1999.

Description of amendments request: The proposed amendment revises Technical Specification (TS) 5.5.11, ''Ventilation Filter Testing Program'' for laboratory testing of charcoal in Clavert Cliffs engineered safety feature (ESF) ventilation systems to reference the latest charcoal testing standard (American Society for Testing and Materials [ASTM] D3803–1989, ''Standard Test Method for Nuclear-Grade Activated Carbon''). This TS change was requested by the Nuclear Regulatory Commission (NRC) in Generic Letter 99–02, ''Laboratory Testing of Nuclear-Grade Activated Charcoal,'' and is based on the NRC's determination that testing nuclear-grade activated charcoal to standards other than ASTM D3803–1989 does not provide assurance for complying with the current licensing basis as it relates to the dose limits of General Design Criterion 19 of Appendix A to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR) and Subpart A of 10 CFR Part 100. The generic letter provided a sample TS that the NRC considers acceptable. The proposed revision to TS 5.5.11 meets the intent of the sample TS. Specifically, the proposed change removes the reference to testing in accordance with American National Standards Institute N510–1975 and changes the allowable methyl iodide penetration to an acceptance criterion that is derived from applying a safety factor of two to the charcoal filter efficiency assumed in Calvert Cliffs design basis dose analysis. The proposed changes will ensure that the charcoal filters used in ESF ventilation systems will perform in a manner that is consistent with the particular ESF charcoal adsorption efficiencies assumed in the analyses of design basis accidents.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed change makes changes to the methods, test conditions, and acceptance criteria associated with the performance of the laboratory tests of charcoal samples. The effected equipment is used to mitigate the consequences of an accident and are not accident initiators. This proposed change does not make any changes to the method of obtaining the charcoal sample. No structural changes or modifications are being made to the ESF ventilation equipment. This proposed change does not make any changes to equipment, procedures, or processes that increase the likelihood of an accident. Therefore, this proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The ESF ventilation systems are designed to mitigate the consequences of accidents. The design basis analysis of the accidents account to varying degrees for the reduction in airborne radioactive material provided by the charcoal filters. The proposed change will change the charcoal filter test protocol to ASTM D3803–1989. The use of this standard will produce more accurate and reproducible laboratory test results and provides a more conservative estimate of charcoal filter capability. The proposed change makes changes to the methyl iodide penetration acceptance criteria to ensure that the charcoal filters are capable of performing their required safety function for the expected operating cycle. The proposed change will make it more likely that the charcoal will meet its intended safety function as described in the Updated Final Safety Analysis Report. Therefore, the proposed change does not significantly increase the consequences of an accident previously evaluated.

Based on the above, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed change will not make any physical changes to the plant or changes to the ESF ventilation system operation. The proposed change is limited to the ESF ventilation system testing protocol, test conditions, and acceptance criteria. These changes are administrative in nature. This proposed change does not make any changes to the method of obtaining the charcoal sample. This proposed change does not cause any ESF ventilation equipment to be operated in a new or different manner. No structural changes or modifications are being made to the ESF ventilation equipment. This proposed change does not create any new interactions between any plant components. Therefore, the possibility of a new or different type of accident is not created by this proposed change.

3. Would not involve a significant reduction in a margin of safety.

The safety function of the ESF ventilation systems is to mitigate the consequences of accidents by reducing the potential release of radioactive material to the environment or the Control Room following a design basis accident. The TS requirements for laboratory testing of charcoal samples provides assurance that the charcoal filters in these systems are capable of reducing airborne radioactive material to within acceptable limits. The proposed license amendment requires the use of the latest NRC-accepted charcoal testing standard and makes changes to the charcoal testing methyl iodide removal efficiency acceptance limits in accordance with the formula provided by the NRC in Generic Letter 99–02. The proposed license amendment continues to provide assurance that the charcoal filters are capable of reducing airborne radioactive material to within acceptable limits. Therefore, the proposed 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 amendments request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Sheri R. Peterson.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: November 22, 1999.

Description of amendments request: The Baltimore Gas and Electric Company (BGE) requests an amendment to implement a change to the Calvert Cliffs Nuclear Power Plant (CCNPP) Updated Final Safety Analysis Report (UFSAR) that constitutes an unreviewed safety question as described in 10 CFR 50.59.

The change revises the information currently provided within the UFSAR on aircraft and their flight paths for Patuxent River Naval Air Station (Pax River NAS). The existing information is outdated and does not reflect current conditions for aircraft utilizing Pax River NAS. Additionally, the UFSAR will be revised to add information pertaining to the corporate helipad located northwest of the plant.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of an aircraft crash was not quantified during the timeframe of licensing and construction of the plant. As was noted previously, the Directorate of Licensing at the U.S. Atomic Energy Commission concurred with Baltimore Gas and Electric Company's conclusion that no special design provisions were required to be incorporated into Calvert Cliffs Nuclear Power Plant (CCNPP) because the probability of an aircraft crash affecting the plant was acceptably low (implies a probability of less than 10^{-7}/Year). Therefore, the probability of an aircraft crash affecting the plant was acceptably low at less than 10^{-7}/year.

The probability of an aircraft accident resulting in radiological consequences greater than 10 CFR Part 100 exposure guidelines was considered to still be below the Standard Review Plan (SRP) (NUREG–0800) level of acceptability of 1.0×10^{-7} per year for CCNPP. The probability of an aircraft accident during the timeframe of original construction and licensing of the plant was never quantified. Since today's probability of an aircraft accident may be higher based on the fact that, at times, aircraft going into Patuxent River Naval Air Station fly over the plant, where previously they came no closer than seven miles from the plant (as described in the UFSAR), the probability of occurrence of an accident will conservatively be considered to have increased. However, it should be noted that the probability of an aircraft accident resulting in radiological consequences greater than 10 CFR Part 100 exposure guidelines is still considered to be below 1.0×10^{-7} cr/yr, which is acceptable since it is within SRP Section 3.5.1.6 guidelines. Since the above probability of an aircraft accident meets the criteria of SRP Section 3.5.1.6, no additional design or procedural protection is required. Note that the SRP criteria is only being used as one acceptable method of evaluating risk. Use of this method is not a commitment to the SRP and does not incorporate the SRP into our licensing basis.

Changes to the aircraft flight patterns and/or frequency (probability) have no affect on the design or method of operating equipment necessary to mitigate the consequences of previously analyzed accidents. As was noted above, the aircraft hazard was considered to be acceptable and, therefore, no additional design or procedural protection is required for the plant. Since the aircraft hazard is considered acceptable (where additional design features are not required), it can be concluded that no action assumed to occur within the accident analysis of CCNPP's Updated Final Safety Analysis Report Chapter 14 will be degraded or prevented. Therefore, it is concluded that the current calculated aircraft hazard will not result in an increase of the consequences of an accident preciously evaluated in the UFSAR.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

All possible malfunctions have been previously analyzed. Aircraft hazard was addressed within the original design of the plant. The frequency/probability of an aircraft crash was considered to be so low that special design provisions to protect against aircraft crashes did not have to be considered during construction of CCNPP. The current calculated aircraft hazard is considered to still be within SRP Section 3.5.1.6 guidelines. The possibility for a malfunction of a different type than preciously evaluated in the UFSAR is not created.

Aircraft accidents were considered within the original plant design. The probability of an aircraft accident resulting in radiological consequences greater than 10 CFR Part 100 exposure guidelines is still considered to be below the level of acceptability (per SRP Section 3.5.1.6) and no special design provisions are required. Since an aircraft crash is not a design basis concern, it is not plausible that the possibility of a new accident is created that has not been previously evaluated in the UFSAR. There are also no new challenges to safety-related equipment.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in the margin of safety.

The probability of an aircraft crash affecting the plant, at the time of original licensing and construction, was so low that no special design provisions were needed in the plant for such an event. Since aircraft hazards did not have to be considered within the design of the plant, no margin of safety was required or established for such a hazard. All of the plant equipment and initial condition assumptions stipulated within the UFSAR Chapter 14 accident analysis would not be affected by such an event.

The calculated probability of an aircraft accident resulting in radiological consequences greater than 10 CFR Part 100 exposure guidelines, based on today's aircraft hazard, is considered to be below the 1.0×10^{-7} per year stipulated within SRP Section 3.5.1.6. Therefore, there is still no need for special design provisions within the plant to guard against such an event. All of the plant equipment and initial condition assumptions stipulated within the UFSAR Chapter 14 accident analysis remain unchanged. The plant will continue to operate in such a manner that will ensure acceptable levels of protection for the health and safety of the public.

Therefore, this proposed change does not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Sheri R. Peterson.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: November 23, 1999

Description of amendments request: The requested amendments would change Technical Specification (TS) 5.5.7.c.1, ''Ventilation Filter Testing.'' The testing criteria would be changed consistent with the NRC request in Generic Letter 99–02, ''Laboratory Testing of Nuclear-Grade Activated Charcoal.''

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 license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment revises TS 5.5.7.c.1 to require testing of the SGT [Standby Gas Treatment] system charcoal in accordance with American Society for Testing and Materials (ASTM) D3803–1989, ''Standard Test Method for Nuclear-Grade Activated Carbon.'' Per the existing TSs, the SGT system charcoal must meet an acceptance criteria of < 1.0% penetration of methyl iodide when tested at a relative humidity ≥ 70%. CP&L performs this testing in accordance with the criteria of Regulatory Position C.6.a of Regulatory Guide 1.52, Revision 1, 1976, ''Design, Testing, and Maintenance Criteria for Engineered Safety Feature Atmosphere Cleanup System Air Filtration and Adsorption Units of Light-Water-Cooled Nuclear Power Plants.'' As stated in Updated Final Safety Analysis Report, Section 6.5.1.1, the purpose of the SGT system, along with that of the primary and secondary containment, is to mitigate accident consequences. It is not associated with any initiating events and, therefore, cannot affect the probability of any accident.

ASTM D3803–1989 is an industry accepted standard for charcoal filter testing. The conditions employed by this standard were selected to approximate operating or accident conditions of a nuclear reactor which would severely reduce the performance of activated carbons. The key difference associated with the two testing protocols is the testing temperature. Specifically, testing to a challenge temperature of 30 °C per ASTM D3803–1989 versus 80 °C per Regulatory

Guide 1.52 results in a much more stringent test. Testing at a higher temperature tends to eliminate impurities and moisture from the sample. This creates the possibility of the charcoal achieving a slightly higher efficiency than actual. Other parameter changes will not significantly affect charcoal test performance and will result in more accurate and reproducible test results.

The proposed TS change also includes a requirement that the test be performed with a face velocity of 61 fpm. A single BSEP SGT system train operates at a maximum flow rate of 4200 scfm which corresponds to a face velocity of 61 fpm. In accordance with Generic Letter (GL) 99–02, this requirement has been included in TS 5.5.7.c.1.

As recommended by GL 99–02, the proposed amendment incorporates a safety factor of 2 into the allowed methyl iodide penetration limit. The existing TS 5.5.7.c.1 acceptance criteria of 99% does not account for a safety factor. In previous testing, CP&L has applied the safety factor provided by Regulatory Guide 1.52, Revision 1, 1976, to the laboratory testing results to ensure proper charcoal performance. The proposed changes to TS 5.5.7.c.1 require that charcoal samples, tested in accordance with the methodology of ASTM D3803–1989, show the methyl iodide penetration to be < 0.5%. The 0.5% penetration limit is derived by applying a safety factor of 2 to the 99% filtration efficiency assumed in the current bounding calculations for offsite radiological dose release limits. As such, the acceptance criteria of < 0.5% penetration of methyl iodide ensures that 10 CFR 100 offsite dose limits are not exceeded.

Based on the more stringent testing temperature requirements, the new face velocity testing requirement, and the acceptance criteria of < 0.5% penetration of methyl iodide, the proposed change will not result in an increase in the consequences of an accident previously evaluated.

2. The proposed license amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes revise the required testing methodology for SGT system charcoal. The SGT system is not an initiator of any accident, and no new accident precursors are created due to the change in the charcoal testing methodology. In addition, the change does not alter the design, function, or operation of the SGT system. Therefore, the proposed change to test SGT system charcoal in accordance with ASTM D3803–1989 will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendment does not involve a significant reduction in a margin of safety.

The proposed amendment upgrades the SGT system charcoal testing requirements to those contained in ASTM D3803–1989. The conditions employed by ASTM D3803–1989 were selected to approximate operating or accident conditions of a nuclear reactor which could reduce the performance of activated carbons. The key difference between CP&L's current testing protocol and ASTM D3803–1989 is the testing temperature. Specifically, testing to a challenge temperature of 30°C per ASTM D3803–1989 versus 80°C per Regulatory Guide 1.52 results in a much more stringent test.

The proposed TS change also includes a requirement that the test be performed with a face velocity of 61 fpm. A single BSEP SGT system train operates at a maximum flow rate of 4200 scfm which corresponds to a face velocity of 61 fpm. In accordance with GL 99–02, this requirement has been included in TS 5.5.7.c.1.

As recommended by GL 99–02, the proposed amendment incorporates a safety factor of 2 into the allowed methyl iodide penetration limit. The existing TS 5.5.7.c.1 acceptance criteria of 99% does not account for a safety factor. In previous testing, CP&L has applied the safety factor provided by Regulatory Guide 1.52, Revision 1, 1976, to the laboratory testing results to ensure proper charcoal performance. The proposed changes to TS 5.5.7.c.1 require that charcoal samples, tested in accordance with the methodology of ASTM D3803–1989, show the methyl iodide penetration to be < 0.5%. The 0.5% penetration limit is derived by applying a safety factor of 2 to the 99% filtration efficiency assumed in the current bounding calculations for offsite radiological dose release limits. As such, the acceptance criteria of < 0.5% penetration of methyl iodide ensures that 10 CFR 100 offsite dose limits are not exceeded.

Based on the more stringent testing temperature requirements, the new face velocity testing requirement, and the acceptance criteria of < 0.5% penetration of methyl iodide, the proposed 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.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Richard P. Correia.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: November 30, 1999.

Description of amendment request: The amendment revises Technical Specifications (TS) Section 5.5.11, Ventilation Filter Testing Program (VFTP) testing requirements. The proposed change requires VFTP testing be done according to ASTM D3803–1989 protocol in lieu of previous standards.

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:

Carolina Power & Light (CP&L) Company has evaluated the proposed Technical Specification change and has concluded that it does not involve a significant hazards consideration. The CP&L conclusion is in accordance with the criteria set forth in 10 CFR 50.92. The bases for the conclusion that the proposed change does not involve a significant hazards consideration are discussed below.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change to Technical Specification Section 5.5.11, ''Ventilation Filter Testing Program,'' does not involve any physical alteration of plant systems, structures or components, changes in parameters governing normal plant operation, or methods of operation. The proposed change updates the required testing of Engineered Safety Features (ESF) ventilation filter systems to more recent standards accepted by the NRC and described in Generic Letter (GL) 99–02, ''Laboratory Testing of Nuclear-Grade Activated Charcoal.'' The NRC has found that charcoal filter test protocols other than American Society for Testing and Materials (ASTM) standard ASTM D3803–1989 do not assure accurate and reproducible test results. Since this proposed change references an acceptable testing standard and provides assurance that the current licensing basis is met, the proposed change does not involve an increase in the probability or consequences of an accident previously analyzed.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve any physical alteration of plant systems, structures or components, changes in parameters governing normal plant operation, or methods of operation. The proposed change does not introduce a new mode of operation or changes in the method of normal plant operation. The proposed change introduces a new testing standard for ESF ventilation system charcoal samples removed for testing and does not involve manipulation of plant systems to perform the charcoal test. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change revises the required testing standard for ESF ventilation charcoal filter systems and does not alter plant design margins or analysis assumptions as described in the Updated Final Safety Analysis Report. The proposed change does not affect any limiting safety system setpoint, calibration method, or setpoint calculation. The proposed change is more restrictive with regard to testing protocol and less restrictive with respect to the allowed penetration during testing of the Control Room ventilation system charcoal. However, the allowed increase in penetration is in accordance with the method for determining the allowable penetration described in GL 99–02. Therefore, the proposed 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.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Section Chief: Richard P. Correia.

Energy Northwest, Docket No. 50–397, WNP–2, Benton County, Washington

Date of amendment request: November 18, 1999.

Description of amendment request: The proposed amendment requests a revision to Technical Specification (TS) 5.5.7.c. The changes would revise the requirements that (1) a sample of the charcoal absorber for the standby gas treatment (SGT) system and the control room emergency filtration (CREF) system be tested in accordance with American Society for Testing and Materials (ASTM) D3803–1986, ''Standard Test Method for Nuclear-Grade Activated Carbon'', (2) methyl iodide penetration be less than a value of .175% for the SGT system and 1.0% for the CREF system, and (3) charcoal absorber testing be conducted at a relative humidity of greater than or equal to 70%. As requested by Generic Letter (GL) 99–02, ''Laboratory Testing of Nuclear-Grade Activated Charcoal,'' Energy Northwest proposed that TS 5.5.7.c be revised so that (1) testing of charcoal absorber samples be in accordance with ASTM D3803–1989 at a specified temperature of 30° Centigrade (C) [86° Fahrenheit (F)], (2) methyl iodide penetration to be less than a value of 0.5% for the SGT system and 2.5% for the CREF system, (3) testing be performed at 70% relative humidity, and (4) a face velocity of 75 feet-per-minute (fpm) will be specified for the SGT system. In addition, the revision to TS 5.5.7.c will note that variations in testing parameters are permitted in accordance with the guidance in Table 1 and Section A5.2 of ASTM D3803–1989.

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 SGT System is designed to limit the release of airborne radioactive contaminants from secondary containment to the atmosphere within the guidelines of 10 CFR 100 in the event of a DBA [design basis accident]. The CREF System provides a radiologically controlled environment from which the plant can be safely operated following a DBA. The proposed amendment will require that charcoal from these two ESF [engineered safeguard feature] systems be tested to the more conservative standards of ASTM D3803–1989. Using the more conservative ASTM D3803–1989 testing standard will provide no increase in the probability of an accident previously evaluated.

The staff considers ASTM D3803–1989 to be the most accurate and most realistic protocol for testing charcoal in ESF ventilation systems because it offers the greatest assurance of accurately and consistently determining the capability of the charcoal. Using the more conservative ASTM D3803–1989 testing standard will provide greater assurance that the ESF ventilation systems will properly perform their safety function, thus assuring no increase in the radiological consequences of a DBA.

Therefore, operation of WNP–2 in accordance with the proposed amendment will 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 will not create a new or different kind of accident since it only requires that charcoal from the SGT and CREF safety-related filtration systems be tested to the more conservative standards of ASTM D3803–1989. Using the more conservative ASTM D3803–1989 testing standard will provide even greater assurance that the ESF ventilation systems will properly perform their safety function, thus helping to minimize the radiological consequences of a DBA. The increased margin provided by the more conservative testing standard will assure no new or different kinds of accidents results from the proposed change.

Therefore, the operation of WNP–2 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed amendment requires that more conservative ESF charcoal filter testing criteria be used to verify ESF ventilation systems are operable. More conservative testing criteria will provide greater assurance that the ESF ventilation systems will properly perform their safety function, thus helping to minimize the radiological consequences of a DBA. Using more conservative testing criteria will result in maintaining the current 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.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005–3502.

NRC Section Chief: Stephen Dembek.

Energy Northwest, Docket No. 50–397, WNP–2, Benton County,Washington

Date of amendment request: November 18, 1999.

Description of amendment request: The proposed amendment requests a revision to subsection 4.3.1.2.b of Technical Specification 4.3, Fuel Storage. The change would revise the current wording, which describes the spacing of the fuel in the new fuel racks, with wording that would limit the number of fuel assemblies that may be stored in the facility and establish increased spacing limitations for storage of new fuel assemblies in the racks.

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 does not increase the consequences of any previously analyzed accident or transient, since the arrangement of new nuclear fuel in storage racks maintains the effective neutron multiplication factor much less than 0.95. The change in configuration requirements will not increase the probability of any previously analyzed accident, because physical constraints are installed in the storage racks when new fuel assemblies are inserted, assuring that only certain cells can be used for storage of new fuel.

Therefore, operation of WNP–2 in accordance with the proposed amendment will 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 is consistent with a new fuel criticality analysis performed in support of a previously implemented change to Section 9.1 of the FSAR. A variety of accidents were considered in that analysis, and it was determined that the effective neutron multiplication factor was well below specified limits for any normal or accident case.

Therefore, operation of WNP–2 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The current wording of Technical Specification 4.3.1.2.b was determined to not provide sufficient margin of safety to assure that the requirements of Technical Specification 4.3.1.2.a would be maintained. The proposed amendment modifies the requirements for new fuel storage configuration for Technical Specification 4.3.1.2.b, to assure the margin of safety is maintained for optimum moderation conditions.

Therefore, operation of WNP–2 in accordance with the proposed amendment will 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.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005–3502.

NRC Section Chief: Stephen Dembek.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: August 20, 1999.

Description of amendment request: The proposed amendment request is to incorporate 17 improvements (identified by Technical Specification Task Force (TSTF) numbers) to the Improved Standard Technical Specifications (TSs), NUREG–1434 (for BWR/6 plants such as the Grand Gulf plant), that was part of the basis for the current improved TSs for Grand Gulf Nuclear Station (GGNS) that were issued in Amendment 120 dated February 21, 1995. These improvements to the improved TSs for BWR/6 plants such as GGNS are identified by TSTF numbers and are the following: (1) TSTF–2, relocate the 10 year sediment cleaning of the diesel generator fuel storage tank in Surveillance Requirement (SR) 3.8.3.6 to the GGNS Updated Final Safety Analysis Report (UFSAR), (2) TSTF–5, delete notification, reporting, and restart requirements if a safety limit is violated in TSs Section 2.2, (3) TSTF–9, relocate the shutdown margin values in Limiting Conditions for Operation (LCO) 3.1.1 and SR 3.1.1.1 to the Core Operating Limits Report (COLR), (4) TSTF–17, extension of the testing frequency for the primary containment airlock interlock mechanism from 184 days to 24 months in SR 3.6.1.2.3 and deletion of the SR Note, (5) TSTF–18, reword and clarify SR 3.6.4.1.2 to require only one secondary containment access door per access opening to be closed, (6) TSTF–32, move the requirement to ensure that ''slow'' and withdrawn stuck control rods are appropriately separated from LCO 3.1.4 requirements to LCO 3.1.3 Condition A Required Actions, (7) TSTF–33, administrative change to clarify the Completion Time for LCO 3.1.3 Required Action A.2, (8) TSTF–38, revise and clarify the visual surveillance in SR 3.8.4.3 for batteries to specify the inspection is for performance degradation, (9) TSTF–45, revise SRs 3.6.1.3.2 and 3.6.1.3.3 to specify that only Primary Containment Isolation Valves which are not locked, sealed, or otherwise secured are required to be verified closed, (10) TSTF–60, exempt LCO 3.4.7 on Reactor Coolant System Leakage Detection Instrumentation from LCO 3.0.4 which restricts entry into MODES, or specified conditions with required equipment inoperable, (11) TSTF–104, relocate the discussion of exceptions in LCO 3.0.4 to the Bases of the TSs, (12) TSTF–118, add a sentence to the administrative controls program in TSs Administrative Controls Section 5.5.9 that the provisions of SRs 3.0.2 and 3.0.3 applies to the specified testing frequencies of the Diesel Fuel Oil Testing Program, (13) TSTF–153, clarify the exception Notes for LCOs 3.4.9, 3.4.10, 3.9.8, and 3.9.9 to be consistent with the requirement being excepted, (14) TSTF–163, modify SRs 3.8.1.2, 3.8.1.12, 3.8.1.15, and 3.8.1.20 for diesel generators to provide minimum volt/Hz limits for the 10-second acceptance and detail the current volt/Hz range as ''steady state'' acceptance criteria, (15) TSTF–166, revise LCO 3.0.6 to explicitly require an evaluation per the Safety Function Determination Program and delete the statement that ''additional * * * limitations may be required,'' (16) TSTF–278, LCO 3.8.6 is revised to require that battery cell parameters be ''within limits,'' the reference to Table 3.8.6–1 is deleted, and a reference to the table is added to the Actions Table for LCO 3.8.6, and (17) TSTF–279, delete the reference to the ''applicable supports'' from the description of the ''Inservice Testing Program'' in the Administrative Controls TSs, Section 5.5.6. The licensee is proposing the current latest revision for each TSTF at the time of application with minor exceptions and/or clarification in some cases.

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 (NSHC). The licensee's NSHC is divided into the following five categories (which also list the TSTF changes in each category): administrative changes, less restrictive changes—removed detail, less restrictive changes—relaxation of required action, less restrictive changes—deletion of surveillance requirement, and less restrictive changes—relaxation of surveillance frequency. The licensee's category NSHCs are presented below:

1. Administrative Changes

These changes involve reformatting, renumbering, and rewording of [TSs], with no change in intent. Since they do not change the intent of the [TSs] they are considered to be administrative in nature. The GGNS is adopting NRC [Nuclear Regulatory Commission] approved TSTF–5, TSTF–18, TSTF–33, TSTF–38, TSTF–104, TSTF–118, TSTF–153, TSTF–163, TSTF–166, TSTF–278, and TSTF–279, generic changes to the Improved Standard Technical Specifications (ISTS) as outlined in NUREG–1434, ''Standard Technical Specifications, BWR/6 Plants.'' In accordance with the criteria set forth in 10 CFR 50.92, EOI [Entergy Operations, Inc.] has evaluated these proposed [TSs] changes and determined they do not represent a significant hazards consideration. The following is provided in support of this conclusion.

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves reformatting, renumbering, and rewording the existing [TSs]. The reformatting, renumbering, and rewording process involves no changes in intent to the [TSs]. The proposed changes also involve [TSs] requirements, which are purely administrative in nature. As such, this change does not [a]ffect initiators of analyzed events or assumed mitigation of accident or transient events. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed change will not impose any new or eliminate any old requirements. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does this change involve a significant reduction in a margin of safety?

The proposed change will not reduce a margin of safety because it has no [a]ffect on any safety analyses assumptions. This change is administrative in nature. Therefore, the change does not involve a significant reduction in a margin of safety.

2. Less Restrictive Changes—Removed Detail

GGNS is adopting NRC approved TSTF–2, TSTF–9, and TSTF–32 generic changes to the Improved Standard Technical Specifications (ISTS) as outlined in NUREG–1434, ‘‘Standard Technical Specifications, BWR/6 Plants.’’ The proposed changes involve moving details out of the [TSs] and into the [TSs] Bases, the UFSAR, or the Core Operating Limits Report (COLR). The removal of this information is considered to be less restrictive because it is no longer controlled by the [TSs] change process. Typically, the information moved is descriptive in nature and its removal conforms with NUREG–1434 for format and content.

In accordance with the criteria set forth in 10 CFR 50.92, the EOI has evaluated these proposed [TSs] changes and determined they do not represent a significant hazards consideration. The following is provided in support of this conclusion.

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change relocates certain details from the [TSs] to other documents under regulatory control. The Bases and UFSAR will be maintained in accordance with 10 CFR 50.59. In addition to 10 CFR 50.59 provisions, the [TSs] Bases are subject to the change control provisions in the Administrative Controls Chapter of the [TSs]. The UFSAR is subject to the change control provisions of 10 CFR 50.71(e). The COLR is controlled in accordance with TS[s] 5.6.5. The controls of TS[s] 5.6.5 will ensure that adequate limits are maintained and reported to the NRC. Since any changes to these documents will be evaluated, no significant increase in the probability or consequences of an accident previously evaluated will be allowed. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change will not impose or eliminate any requirements, and adequate control of the information will be maintained. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does this change involve a significant reduction in a margin of safety?

The proposed change will not reduce a margin of safety because it has no [a]ffect on any safety analysis assumptions. In addition, the details to be moved from the [TSs] to other documents remain the same as the existing [TSs]. Since any future changes to these details will be evaluated, no significant reduction in a margin of safety will be allowed. A significant reduction in the margin of safety is not associated with the elimination of the 10 CFR 50.92 requirement for NRC review and approval of future changes to the relocated details. The proposed change is consistent with the BWR/6 Standard Technical Specifications, NUREG–1434, issued by the NRC Staff, revising the [TSs] to reflect the approved level of detail, which indicates that there is no significant reduction in the margin of safety.

3. Less Restrictive Changes—Relaxation of Required Action

GGNS is adopting NRC approved TSTF–60 generic changes to the Improved Standard Technical Specifications (ISTS) as outlined in NUREG–1434, ‘‘Standard Technical Specifications, BWR/6 Plants.’’ The proposed changes involve relaxation of the Required Actions in the current Technical Specifications (TS).

Upon discovery of a failure to meet an LCO, the TS specifies Required Actions to be completed for the associated Conditions. Required Actions of the associated Conditions are used to establish remedial measures that must be taken in response to the degraded conditions. These actions minimize the risk associated with continued operation while providing time to repair inoperable features. Some of the Required Actions are modified to place the plant in a MODE in which the LCO does not apply. Adopting Required Actions from this change is acceptable because the Required Actions take into account the operability status of redundant systems of required features, the capacity and capability of the remaining features, and the compensatory attributes of the Required Actions as compared to the LCO requirements. These changes have been evaluated to not be detrimental to plant safety.

In accordance with the criteria set forth in 10 CFR 50.92, the EOI has evaluated these proposed [TSs] changes and determined they do not represent a significant hazards consideration. The following is provided in support of this conclusion.

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change relaxes Required Actions. Required Actions and their associated Completion Times are not initiating conditions for any accident previously evaluated and the accident analyses do not assume that required equipment is out of service prior to the analyzed event. Consequently, the relaxed Required Actions do not significantly increase the probability of any accident previously evaluated. The Required Actions in the change have been developed to provide assurance that appropriate remedial actions are taken in response to the degraded condition considering the operability status of the redundant systems of required features, and the capacity and capability of remaining features while minimizing the risk associated with continued operation. As a result, the consequences of any accident previously evaluated are not significantly increased. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The Required Actions and associated Completion Times in the change have been evaluated to ensure that no new accident initiators are introduced. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does this change involve a significant reduction in a margin of safety?

The relaxed Required Actions do not involve a significant reduction in the margin of safety. As provided in the justification, this change has been evaluated to minimize the risk of continued operation under the specified Condition, considering the operability status of the redundant systems of required features, the capacity and capability of remaining features, a reasonable time for repairs or replacement of required features, and the low probability of a DBA [design basis accident] occurring during the repair period. Therefore, this change does not involve a significant reduction in a margin of safety.

4. Less Restrictive Changes—Deletion of Surveillance Requirement

GGNS is adopting NRC approved TSTF–45 which is a generic change to the Improved Standard Technical Specifications (ISTS) as outlined in NUREG–1434, ‘‘Standard Technical Specifications, BWR/6 Plants.’’ The proposed changes involve deletion of [SRs] in the current Technical Specifications (TS).

The TS require safety systems to be tested and verified Operable prior to entering applicable operating conditions. These changes eliminate unnecessary TS [SRs] that do not contribute to verification that the equipment used to meet the LCO can perform its required functions. Thus, appropriate equipment continues to be tested in a manner and at a frequency necessary to give confidence that the equipment can perform its assumed safety function. These changes have been evaluated to not be detrimental to plant safety.

In accordance with the criteria set forth in 10 CFR 50.92, the EOI has evaluated these proposed [TSs] changes and determined they do not represent a significant hazards consideration. The following is provided in support of this conclusion.

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change deletes [SRs]. Surveillance's are not initiators to any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be Operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly [a]ffected. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The remaining [SRs] are consistent with industry practice and are considered to be sufficient to prevent the removal of the subject Surveillance's from creating a new or different type of accident. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does this change involve a significant reduction in a margin of safety?

The deleted [SRs] do not result in a significant reduction in the margin of safety. As provided in the justification, the change has been evaluated to ensure that the deleted [SRs] are not necessary for verification that the equipment used to meet the LCO can perform its required functions. Thus, appropriate equipment continues to be tested in a manner and at a frequency necessary to give confidence that the equipment can perform its assumed safety function. Therefore, this change does not involve a significant reduction in a margin of safety.

5. Less Restrictive Changes—Relaxation of Surveillance Frequency

GGNS is adopting NRC approved TSTF–17 which is a generic change to the Improved Standard Technical Specifications (ISTS) as outlined in NUREG–1434, ''Standard Technical Specifications, BWR/6 Plants.'' The proposed changes involve the relaxation of Surveillance Frequencies in the current Technical Specifications (TS).

Surveillance Frequencies specify time interval requirements for performing surveillance testing. Increasing the time interval between Surveillance tests results in decreased equipment unavailability due to testing which also increases equipment availability. Reduced testing can result in a safety enhancement because the unavailability due to testing is reduced and[,] in turn, reliability of the [a]ffected structure, system or component should remain constant or increase. Reduced testing is acceptable where operating experience, industry practice or the industry standards such as manufacturers' recommendations have shown that these components usually pass the Surveillance when performed at the specified interval, thus the frequency is acceptable from a reliability standpoint. These changes have been found to be acceptable based on a combination of the above criteria and have been evaluated to not be detrimental to plant safety.

In accordance with the criteria set forth in 10 CFR 50.92, the EOI has evaluated these proposed [TSs] changes and determined they do not represent a significant hazards consideration. The following is provided in support of this conclusion.

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change relaxes Surveillance Frequencies. The relaxed Surveillance Frequencies have been established based on achieving acceptable levels of equipment reliability. Consequently, equipment which could initiate an accident previously evaluated will continue to operate as expected and the probability of the initiation of any accident previously evaluated will not be significantly increased. The equipment being tested is still required to be Operable and capable of performing any accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly [a]ffected. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does this change involve a significant reduction in a margin of safety?

The relaxed Surveillance Frequencies do not result in a significant reduction in the margin of safety. As provided in the justification, the relaxation in the Surveillance Frequency has been evaluated to ensure that it provides an acceptable level of equipment reliability. Thus, appropriate equipment continues to be tested at a Frequency that gives confidence that the equipment can perform its assumed safety function when required. 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.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: November 4, 1999. This amendment request supercedes the licensee's application of June 10, 1999, in its entirety. (64 FR 38025)

Description of amendment request: The proposed amendment would remove the existing filter testing requirements of the Technical Specifications (TSs) and replace them with a reference to the Ventilation Filter Testing Program which is being added to the Administrative Controls section of the Davis-Besse TS. The amendment introduces TS 6.8.4.f, ''Ventilation Filter Testing Program,'' and removes the specific ventilation filter testing requirements from the surveillance requirements of TS 3/4.6.4.4, ''Hydrogen Purge System,'' TS 3/4.6.5.1, ''Shield Building Emergency Ventilation System,'' and TS 3/4.7.6.1, ''Control Room Emergency Ventilation System.'' Also included are supporting Bases changes to TS 3/4.6.4.4, TS 3/4.6.5.1, and TS 3/4.7.6.1

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

The Davis-Besse Nuclear Power Station has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station(DBNPS), Unit Number 1, in accordance with this change would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no change is being made to any accident initiator. The replacement of the specific Technical Specification (TS) ventilation filter testing Surveillance Requirements for the Containment Hydrogen Purge System (3/4.6.4.4), Shield Building Emergency Ventilation System (3/4.6.5.1), and the Control Room Emergency Ventilation System (3/4.7.6.1), with a reference to the newly created Ventilation Filter Testing Program contained in TS Administrative Controls Section 6.8.4.f, Ventilation Filter Testing Program, is a removal and relocation of certain TS details. The proposed TS 6.8.4.f will, however, add controls to maintain similar operation, maintenance, testing and system operability for these three ventilation systems. The TS Bases changes reflect the use of the Ventilation Filter Testing Program.

The replacement of ASTM D 3803–1979 with ASTM D 3803–1989 for laboratory testing of the charcoal filter samples reflects the NRC recommendations in Generic Letter 99–02, ''Laboratory Testing of Nuclear Grade Activated Charcoal.'' ASTM D 3803–1989 is a more stringent testing standard for charcoal filter testing, than the present standard referenced by the TS.

The increase in allowable charcoal penetration due to the use of a safety factor of ''2'' is acceptable as a result of using this more stringent testing standard.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not affect accident conditions or assumptions used in evaluating the radiological consequences of an accident. The increase in allowable charcoal penetration due to the use of a safety factor of ''2'' is acceptable as a result of using this more stringent testing standard. No physical alterations of the DBNPS are involved, nor are plant operating methods being changed. The proposed changes do not alter the source term, containment isolation or allowable radiological releases.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not change the way the plant is operated. No new or different types of failures or accident initiators are being introduced by the proposed changes.

3. Not involve a significant reduction in a margin of safety because there are no significant changes to the initial conditions contributing to accident severity or consequences. Therefore, there are no significant reductions in a margin of safety. Testing under the more restrictive requirements of ASTM D 3803–1989 will continue to ensure that the ventilation systems will perform their safety function.

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.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Dade County, Florida

Date of amendment request: December 1, 1999, as supplemented December 15, 1999.

Description of amendment request: The licensee is requesting to revise the Turkey Point Plant Physical Security Plan (PSP) to modify the PSP requirements for compensation of a security computer failure, and to modify the requirements of the minimum security force staffing. The December 1, 1999, submittal supersedes two previous submittals dated March 10 and June 8, 1999, regarding the same subject. As a result of the proposed changes, License Conditions 3.L. for Turkey Point Units 3 and 4 Operating Licenses will be updated to reflect the latest revision to the Physical Security Plan dated December 1, 1999. In addition, the phrase ''Turkey Point Plant, Units 3 and 4 Security Plan'' was revised to ''Turkey Point Physical Security Plan.'' The latter changes are administrative in nature.

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 amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

These changes will not significantly affect the ability to detect a Protected Area intrusion. These changes do not affect the ability of a security response to an overt attack on the plant. These changes will not affect the ability of the security force to respond to contingency events. Therefore, the proposed changes do not affect the probability or consequences of accidents previously analyzed.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

These changes do not affect the ability of the security force to defeat the design basis threat. The composition of the response organization is not effected by these changes.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The demonstrated level of dependability of the security system ensures that a significant reduction in effectiveness or margin of safety does not occur.

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. The staff has also reviewed the changes to License Conditions 3.L. for Turkey Point Units 3 and 4 Operating Licenses, as well as the change of the security plan title. Based on this review, the staff finds that the changes are administrative in nature and that they meet the three criteria discussed above. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Richard P. Correia.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: October 6, 1999.

Description of amendment request: This proposed Technical Specification TS change will revise the Cooper Nuclear Station (CNS) TS Sections 1.0, ''Use and Application,'' 3.6, ''Containment Systems,'' Bases 3.0, ''Limiting Condition for Operation (LCO) Applicability,'' Bases 3.6, ''Containment Systems,'' and 5.5, ''Programs and Manuals,'' to adopt the implementation requirements of 10 CFR Part 50, Appendix J, Option B, for the performance of Type A, B, and C containment leakage rate testing. Contingent upon the Nuclear Regulatory Commission's (NRC's) approval of the proposed TS change, the licensee is also requesting the NRC to grant the withdrawal of two exemptions. These exemptions were previously granted under Option A to 10 CFR Part 50, Appendix J; however, under Option B they are no longer required.

The proposed TS change also contains line-item changes for TS requirements addressing containment airlock interlocks, primary and secondary containment isolation valves and power-operated automatic valves. These changes, along with the specific change to implement Option B, have been previously approved by the NRC through submittals made by the Nuclear Energy Institute-sponsored TS Task Force.

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:

The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Implement 10 CFR 50 Appendix J, Option B.

There is no increase in the probability or consequences of an accident since there is no work that would affect containment integrity. The testing of containment isolation valves and other containment penetration sealing devices are not postulated as an accident precursor or initiating event.

The NRC has concluded, prior to approving Option B, that performance-based testing would eliminate or modify prescriptive regulatory requirements for which the burden is marginal-to-safety. Reviews and analyses considered by the NRC are presented in NUREG–1493, ''Performance-Based Containment Leak-Test Program, Final Report,'' September 1995 (Attachment 2, Reference 12 [of the October

6, 1999, application]). The historical leakage rate test results for Cooper and for the nuclear industry support extension of the testing frequencies and demonstrate that structural integrity has been maintained.

Type A testing is capable of determining the total leakage from both local leakage paths and gross containment leakage paths. The Type B and C testing has consistently provided accurate leakage rates for valves and penetrations. Administrative controls govern maintenance and testing such that there is very low probability that unacceptable maintenance or alignments can occur. Prior to and following maintenance on primary containment isolation valves and penetrations, a local leak rate test is required to be performed. As a result, Type A testing is not required to accurately quantify the leakage through containment penetrations.

Extension of testing frequency of containment airlock interlock mechanism from 18 months to 24 months.

There is no increase in the probability or consequences of an accident since there is no work that would affect containment integrity. The testing of containment airlock interlocks, isolation valves and other containment penetration sealing devices is not postulated as an accident precursor or initiating event.

This changed the testing of the containment airlock interlocks from 18 months to 24 months. This testing is only performed during periods of reactor shut down and the primary containment is de-inerted. Thus this change plus the allowance from SR [Surveillance Requirement] 3.0.2, provides a total of 30 months, which corresponds to the overall airlock leakage test frequency under Option B. In this fashion, the interlock can be tested in a Mode where the interlock is not required.

Clarify the Containment Isolation Valve (CIV) surveillance to apply to only automatic isolation valves.

The Bases for SR 3.6.1.3.5 state that the isolation time test ensures the valve will isolate in time period less than or equal to that assumed in the safety analysis. There may be valves credited as containment isolation valves, which are power operated, that do not receive a containment isolation signal. These valves do not have an isolation time as assumed in the accident analyses since they require operator action. However, these valves are tested in accordance with the Inservice Test Program as required. Therefore this change reduces the potential for misinterpreting the requirements of this SR while maintaining the assumptions of the accident analysis.

Based on the above discussion, there is no increase in the probability or consequences of an accident, since this change provides clarification of the applicability of the SR and has no affect on those automatic valves with operating times assumed in the accident analysis.

Allow administrative means of position verification for locked or sealed valves.

It is sufficient to assume that the initial establishment of component status (e.g., isolation valve closed) was performed correctly. Subsequently verification is intended to ensure the component has not been inadvertently repositioned. Given that the function of locking, sealing or securing components is to ensure the same avoidance of inadvertent repositioning, the periodic re-verification should only be a verification of the administrative control that ensures that the component remains in the required state. It would be inappropriate to remove the lock, seal, or other means of securing the component solely to perform an active verification of the required state. There is no increase in the probability or consequences of an accident since the function of locking, sealing, or securing components is to ensure that these devices are not inadvertently repositioned.

Therefore, the proposed change described above does not involve a significant increase in the probability or consequences of an accident previously evaluated in the USAR [updated safety analysis report].

The proposed change will not create the possibility of a new or different kind of accident than evaluated in the USAR.

The proposed change involves individual proposed changes related to the implementation of 10 CFR 50 Appendix J, Option B, the extension of testing frequency of the containment airlock interlock, clarification of the CIV surveillance to apply to only automatic isolation valves, and the allowance of administrative means of position verification for locked or sealed valves. The proposed change does not result in any physical change to plant structures, systems, or components. The proposed change does not alter the form, fit, or function of any equipment or components credited in the accident analyses described in the USAR. The performance history of containment testing verifies that containment integrity has been maintained.

The frequency changes allowed by the implementation of the applicable proposed TS changes will not significantly decrease the level of confidence in the ability of the containment to limit offsite doses to allowable values. No accident or malfunction can be the result of the allowed changes to test schedule or frequency.

Since the proposed changes will not directly impact equipment, procedures or operations, the changes will not create the possibility of any new or different kind of accident from any accident previously evaluated in the USAR.

Therefore, the proposed change does not create the possibility of a new or different kind of accident.

The proposed change will not involve a significant reduction in a margin of safety.

The reason for performing containment leakage rate testing is to assure that the leakage paths are identified, and that any accident release will be restricted to those paths assumed in the safety analysis. The purpose for the schedule is to assure that containment integrity is verified on a periodic basis. Implementation of Option B to provide flexibility in the scheduled requirements does not mean that containment integrity will be compromised.

The NRC has concluded, prior to approving Option B, that performance-based testing would eliminate or modify prescriptive regulatory requirements for which the burden is marginal-to-safety. Reviews and analyses considered by the NRC are presented in NUREG–1493, ''Performance-Based Containment Leak-Test Program, Final Report,'' September 1995 (Attachment 2, Reference 12). The historical leakage rate test results for CNS and for the nuclear industry support extension of the testing frequencies and demonstrate that structural integrity has been maintained.

Administrative controls govern position verification for locked or sealed valves such that there is a very low probability that unacceptable alignment can occur.

When the containment airlock interlock is opened during times the interlock is required, the operator first verifies that one door is completely shut before attempting to open the other door. Therefore, the interlock is not challenged except during actual testing of the interlock. Therefore, it should be sufficient to ensure proper operation of the interlock by testing the interlock on a 24 month interval.

There may be valves credited as containment isolation valves, which are power operated, that do not receive a containment isolation signal. These valves do not have an isolation time as assumed in the accident analyses since they require operator action. However, these valves are tested in accordance with the Inservice Test Program as required and as such there will be no reduction in a margin of safety.

Therefore, the proposed 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.

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Section Chief: Robert A. Gramm.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: December 6, 1999.

Description of amendment request: Changes are proposed to Technical Specification (TS) Section 2.1.1.2 for the safety limit minimum critical power ratio (SLMCPR). The proposed changes to TS 2.1.1.2 revise the SLMCPR values from 1.06 to 1.08 for two recirculation loop operation, and from 1.07 to 1.09 for single recirculation loop operation.

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 evaluated?

Evaluation: The basis for the Safety Limit Minimum Critical Power Ratio (SLMCPR) is to ensure that at least 99.9% of all fuel rods in the core avoid transition boiling if the SLMCPR limit is not violated. The revised SLMCPR values preserve the existing margin to transition boiling and thus the probability for fuel damage is not increased. The determination of a revised SLMCPR Technical Specification value does not affect the assumptions of accidents previously evaluated; or initiate, or affect initiators, of accidents previously evaluated. The proposed revisions to SLMCPR are based on the use of methodology previously accepted by the NRC for calculating SLMCPR and do not change the definition of SLMCPR. Thus, the probability of an accident previously evaluated is not increased.

The revised SLMCPR values do not affect the design or operation of any system, structure, or component in the facility. No new or different type of equipment is installed by this change. The proposed revision does not change or alter the design assumptions for systems, structures, or components used to mitigate the consequences of an accident. Thus, he dose consequences of an accident previously evaluated are not increased.

Therefore, the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Evaluation: The SLMCPR ensures that at least 99.9% of all fuel rods in the core avoid transition boiling if the SLMCPR limit is not violated. The revised SLMCPR values preserve the existing margin to transition boiling. The proposed revisions to SLMCPR are based on the use of methodology previously accepted by the NRC for calculating SLMCPR and do not change the definition of SLMCPR. The proposed revision does not change the design or operation of any system, structure, or component. No new or different type of plant equipment is installed by this change. The proposed revision does not involve a change to plant operation or allowable plant operating modes. The calculational methodology used to determine a revised SLMCPR Technical Specification value cannot initiate or create a new or different type of accident.

Therefore, the proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed license amendment create a significant reduction in the margin of safety?

Evaluation: The SLMCPR ensures that at least 99.9% of all fuel rods in the core avoid transition boiling if the SLMCPR limit is not violated. The revised SLMCPR values were calculated using a methodology previously accepted by the NRC, and preserve the existing margin to transition boiling and thus the margin of safety to fuel failure. The proposed change does not involve a relaxation of the criteria or basis used to establish safety limits, or a relaxation in the criteria or bases for the limiting conditions for operation. The assumptions and methodologies used in the plant accident analysis remain unchanged. Therefore, the proposed change does not create 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.

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Section Chief: Robert A. Gramm.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: December 16, 1999.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) Safety Limit Minimum Critical Power Ratio (SLMCPR) values for two recirculation pump and single-loop operation, delete cycle specific footnotes, update the single-loop operation Average Planar Heat Generation rate limiting values, correct a typographical error, and delete an obsolete reference to Siemens fuel.

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.

GE [General Electric] has recently revised their single loop operation (SLO) analysis review procedures to add an additional requirement that the peak cladding temperature (PCT) during a LOCA [loss-of-coolant accident] initiated while in SLO should be bounded by the PCT for a LOCA initiated while in dual loop operation. This desired result is enforced by revising the SLO MAPLHGR [maximum average planar linear heat generation rate] ‘‘multipliers’’ found in Technical Specification 3.11.A from the current value of 0.85 for all fuel to values of 0.78 for GE10 fuel and 0.80 for GE11 and GE12 fuel. This change ensures that the condition that the Upper Bound PCT does not exceed 1600 °F (as required by the NRC-approved SAFER methodology for performing ECCS [emergency core cooling system] LOCA calculations) is satisfied even if a LOCA were to occur while operating in SLO. This change does not alter the method of operating the plant and does not increase the probability of an accident initiating event or transient. These limits are established to preserve required margins.

Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

SLMCPR is a TS numerical value designed to ensure that transition boiling does not occur in greater than 99.9% of all fuel rods in the core during the limiting postulated transient. A change in SLMCPR cannot create the possibility of any new type of accident. SLMCPR values for the new fuel cycle are calculated using previously transmitted methodology. Similarly, changes to the SLO MAPLHGR multiplier values are designed to ensure that the PCT resulting from a LOCA while operating in SLO are bounded by the PCT from a LOCA while operating in dual loop operation. Thus, a change in these multipliers cannot create the possibility of any new type of accident. This multiplier update results from application of GE's current standard methodology for this analysis.

The proposed changes result only from a specific analysis for the Monticello core reload design and deletion of a cycle specific reference for the values. These changes do not involve any new or different method for operating the facility and do not involve any facility modifications. No new initiating events or transients result from these changes.

Therefore, the proposed TS changes do 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.

SLMCPR calculations are based on ensuring that greater than 99.9% of all fuel rods in the core avoid transition boiling if the limit is not violated. Proposed SLMCPRs preserve required margin to transition boiling and fuel damage in the event of a postulated transient. Fuel licensing acceptance criteria for SLMCPR calculations apply to Monticello Cycle 20 in the same manner as applied in previous cycles. The revised SLMCPR values do not change the method of operating the plant and have no effect on the probability of an accident-initiating event or transient because these limits are established to preserve required margin.

Fuel licensing acceptance criteria for SLMCPR calculations apply to Monticello Cycle 20 in the same manner as previously applied. SLMCPRs prepared by GE using methodology previously transmitted to the NRC ensure that greater than 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated, thereby preserving fuel cladding integrity. The operating MCPR limit is set appropriately above the safety limit value to ensure adequate margin when the cycle specific transients are evaluated.

Application of new SLO MAPLHGR multiplier values ensures that SLO LOCA results are bounded by those for dual loop operation and thus maintain or improve the margin of safety for LOCA analyses.

Therefore, the proposed TS 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 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Section Chief: Claudia M. Craig.

Portland General Electric Company, et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: August 5, 1999.

Description of amendment request: The proposed amendment would add a license condition denoting NRC approval of the Trojan Nuclear Plant (TNP) License Termination Plan.

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 requested license amendment does not authorize additional plant activities beyond those that already may be conducted under the approved TNP Decommissioning Plan and the Defueled Safety Analysis Report (DSAR). Accident analyses are included in the approved TNP Decommissioning Plan and incorporated into the TNP DSAR. No systems, structures, or components that could initiate or be required to mitigate the consequences of an accident are affected by the proposed change in any way not previously evaluated in the approved TNP Decommissioning Plan and DSAR. Therefore, the proposed change is administrative in nature and as such 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 requested license amendment does not authorize additional plant activities beyond those that already may be conducted under the approved TNP Decommissioning Plan and the DSAR. Accident analyses are included in the approved TNP Decommissioning Plan and incorporated into the DSAR. The proposed change does not affect plant systems, structures, or components in any way not previously evaluated in the approved TNP Decommissioning Plan and DSAR, and no new or different failure modes will be created. Therefore, the proposed change is administrative in nature and as such 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.

Approval of the TNP License Termination Plan by license amendment is administrative in nature since the decommissioning and fuel storage activities described in the TNP license Termination Plan are consistent with those in the approved TNP Decommissioning Plan and DSAR. Therefore, the proposed 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.

Attorney for licensee: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRC Section Chief: Michael T. Masnik.

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: November 24, 1999.

Description of amendment request: The proposed amendment would delete Section 4.7.D.1.e of Appendix A (Technical Specifications (TSs)) to the James A. FitzPatrick Operating License to eliminate the surveillance requirement for partially stroking of the plant Main Steam Isolation Valves (MSIVs) twice a week. The MSIVs will continue to be fully stroked with a frequency that is in accordance with the In-Service Testing (IST) Program per TS 4.7.D.1.d, which is consistent with the Boiling-Water Reactor Standard Technical Specification and the American Society of Mechanical Engineers Boiler and Pressure Vessel Code. The proposed changes include associated administrative changes to Section 4.7.D.1.d, and to Bases Section 4.7.D of the TSs.

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 will not significant[ly] increase the probability or consequences of any previously evaluated accidents.

This proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. This proposed change deletes the requirement to exercise the MSIVs twice per week. The twice per week exercise involves partial closure of each individual MSIV and subsequent reopening to the full open position.

The safety function of the MSIV is to isolate the main steam line in case of a steam line break, Control Rod Drop Accident or Loss of Coolant Accident in order to limit the loss of reactor coolant and/or the release of radioactive materials. The MSIVs perform a safety function which mitigates the consequences of accidents: however, an event can be initiated by the inadvertent closure of MSIVs. Therefore, eliminating excessive operation of the MSIVs reduces the probability of an inadvertent closure. Also, the surveillance which is being deleted does not test the safety function of the MSIVs. The safety function is tested during the full stroke fast closure test. Since deleting the twice per week exercise of the valves is not considered to have any effect on the reliability of the MSIVs to perform there safety function, there is no increase in the consequences of any postulated accidents. Therefore, deleting the requirement for twice per week exercising of the MSIVs does not significantly increase the probability or consequences of any previously evaluated accidents.

(2) The proposed change will not create the possibility of a new or different kind of accident.

The safety function of the MSIV is to isolate the main steam line in case of a steam line break, Control Rod Drop Accident, or Loss of Coolant Accident in order to limit the loss of reactor coolant and/or the release of radioactive materials. The MSIVs perform a safety function which mitigates the consequences of accidents: however, an event can be initiated by the inadvertent closure of MSIVs. The inadvertent closure of the MSIVs event has been previously evaluated in Chapter 14 of the James A. FitzPatrick Final Safety Evaluation Report (FSAR). The surveillance which is being deleted does not test the safety function of the MSIVs. The safety function is tested during the full stroke fast closure test. Since the MSIVs perform a mitigating safety function, and the MSIV full stroke fast closure test adequately tests the safety function, elimination of the twice per week exercise will not create any new or different kind of accident.

(3) The proposed change will not involve a significant reduction in a margin of safety.

The safety function of the MSIV is not tested during the twice per week exercise. The ability of the MSIVs to perform their safety function is tested during the MSIV full stroke fast closure test in accordance with the IST Program. Therefore, deletion of the requirement does not reduce the margin of safety. The exercising of the MSIVs was originally specified in order to detect binding of the pilot valve. The type of pilot valve that was susceptible to binding was replaced and there is no longer any need for frequent exercising of the MSIVs. The full closure test of the MSIVs in accordance with the IST Program adequately demonstrates that the MSIVs and their pilot valves are not binding and that the MSIVs will perform their safety function. Additionally, reducing the frequency of MSIV operation reduces the probability of inadvertent scrams and transients, and challenges to relief valves, providing a net addition to the margin of safety. The full stroke fast closure test is considered to be sufficient. It is the only test required by the ASME Boiler and Pressure Vessel Code and the BWR Standard Technical Specifications. Therefore, eliminating the twice per week exercise of the MSIVs does not significantly reduce any margin of safety.

The proposed change will not increase the probability or consequences of any previously analyzed accident, introduce any new or different kind of accident previously evaluated, or reduce existing margin to safety. Therefore, the proposed license amendment will not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David E. Blabey, 1633 Broadway, New York, New York 10019.

NRC Section Chief: Alexander W. Dromerick (Acting Section Chief).

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: November 24, 1999.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to implement Filtration, Recirculation, and Ventilation System (FRVS) and Control Room Emergency Filtration (CREF) System charcoal filter testing requirements that are consistent with the U. S. Nuclear Regulatory Commission requirements delineated in Generic Letter 99–02, ''Laboratory Testing of Nuclear-Grade Activated Charcoal.''

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 changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change does not involve any physical changes to plant structures, systems or components (SSC). The CREF and FRVS systems will continue to function as designed. The CREF and FRVS systems are designed to mitigate the consequences of an accident, and therefore, can not contribute to the initiation of any accident. The proposed TS surveillance requirement changes implement testing methods that more appropriately demonstrate charcoal filter capability and establish acceptance criteria, which ensure that Hope Creek's licensing and design basis assumptions are met.

In addition, this proposed TS change will not increase the probability of occurrence of a malfunction of any plant equipment important to safety, since the manner in which the CREF and FRVS systems are operated is not affected by these proposed changes. The proposed surveillance requirement acceptance criteria ensure that the FRVS and CREF safety functions will be accomplished. Therefore, the proposed TS changes would not result in the increase of the consequences of an accident previously evaluated, nor do they involve an increase in the probability 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 TS changes do not involve any physical changes to the design of any plant SSC. The design and operation of the CREF and FRVS systems are not changed from that currently described in Hope Creek's licensing basis. The CREF and FRVS systems will continue to function as designed to mitigate the consequences of an accident. Implementing the proposed charcoal filter testing methods and acceptance criteria does not result in plant operation in a configuration that would create a different type of malfunction to the CREF and FRVS systems than any previously evaluated. In addition, the proposed TS changes do not alter the conclusions described in Hope Creek's licensing basis regarding the safety related functions of these systems.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes contained in this submittal would implement TS requirements that: (1) Are consistent with the requirements delineated in Generic Letter 99–02; (2) implement testing methods that adequately demonstrate charcoal filter capability; and (3) establish acceptance criteria consistent with Hope Creek's licensing basis. The ability of CREF and FRVS to perform their safety functions is not adversely affected by these proposed changes. Therefore, the proposed TS 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.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Southern California Edison Company, et al., Docket Nos. 50–206, 50–361, and 50–362, San Onofre Nuclear Generating Station, Units 1, 2, and 3, San Diego County, California

Date of amendment requests: December 2, 1999 (Unit 1—PCN 267, Units 2 and 3—PCN 506).

Description of amendment requests: This amendment application is a request to revise the Unit 1 Technical Specifications Section D6, Administrative Controls, to be consistent with the San Onofre Units 2 and 3 Technical Specification Section 5.0, Administrative Controls, and incorporate changes related to certified fuel handlers and 10 CFR 50.54(x), administrative control of working hours and working hour deviation approvals, position titles and responsibilities and organizational description reference, qualifications for a multi-discipline supervisor, quality assurance program control of review and audit and record retention procedures, high radiation area controls, description of the plant configuration for environmental protection, and environmental protection related document reporting.

This amendment application also requests to revise the Unit 2 and Unit 3 Technical Specifications, Section 5.0, Administrative Controls, to incorporate changes related to the operating organization, working hours deviation approvals, qualifications for a multi-discipline supervisor, the schedule for submitting Technical Specification Bases changes, reference to American Society of Mechanical Engineers (ASME) code class components, steam generator inspection reporting, Core Operating Limits Report references, high radiation area controls, offsite dose calculation manual change control reference, and environmental protection related document reporting.

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?

No. This proposed change is to revise the administrative controls section of the San Onofre Units 1, 2 and 3 technical specifications. To the extent practicable, the San Onofre Unit 1 technical specification Section D6, Administrative Controls, is made consistent with the San Onofre Units 2 and 3 technical specification Section 5.0, Administrative Controls. This change allows the handling of key administrative controls to be consistent on site. Certain position titles have been revised, and the cognizant Vice President has been included as an approver of deviations from the work hours and reviewer of overtime hours. The Vice President—Business and Financial Services is identified to be responsible for Unit 1 decommissioning. The specification allowing the certified fuel handlers to implement 10 CFR 50.54(x) is removed since this is now included in the regulations. The qualification requirements for a multi-discipline supervisor consistent with the American National Standards Institute [ANSI] standard have been added to the staff qualifications section. The schedule for submitting technical specification Bases changes is revised to be consistent with the NRC approved exemption to 10 CFR 50.71(e) for submitting Updated Final Safety Analysis Report (UFSAR) updates. A reference to Class 1, 2, and 3 ASME code components is removed from the technical specifications and maintained in the Licensee Controlled Specifications (LCS) and the inservice inspection and testing program. The Units 2 and 3 steam generator inspection reporting requirements are revised to refer to the technical specification requirement. The Core Operating Limits Report (COLR) section is revised to include references to 2 topical reports related to the reload analysis technology transfer and the NRC's evaluation of the technology transfer. The sections on high radiation are revised to be consistent with Regulatory Guide 8.38 which provides an acceptable method for controlling access to high radiation areas. The environmental protection section of the San Onofre Unit 1 technical specifications is revised to reflect the current status of the discharge system. The environmental protection sections for Unit 1 and Units 2/3 are further revised by including a 30 day timeframe for providing the NRC copies of reports related to unusual or important environmental events and deleting the requirement to provide the NRC copies of proposed changes and renewal applications for NPDES permits.

All of these changes are being made to provide consistency and flexibility in the handling of site programs, and update and clarify the administrative controls. There are no equipment changes or modifications to the plant associated with these changes that would affect the probability or consequences of accidents at all three units.

Therefore, this change does not affect the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different type of accident from any accident previously evaluated?

No. This proposed change is to revise the administrative controls sections of the San Onofre Units 1, 2, and 3 technical specifications. The changes provide consistency and flexibility in the handling of site programs, and update and clarify the administrative controls. There is no administrative change being made that could create a new or different accident at any of the three units and there is no plant or equipment modification associated with this change.

Therefore, this change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety?

No. This change revises the administrative controls sections of the San Onofre Units 1, 2, and 3 technical specifications. The changes provide consistency and flexibility in the handling of site programs, and update and clarify the administrative controls. There is no change to plant equipment associated with this change. This change does not affect any margin of safety.

Therefore, this change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chiefs: Michael Masnik (Unit 1); Stephen Dembek (Units 2 and 3).

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: November 24, 1999 (PCN–274).

Description of amendment requests: The licensee proposes to revise Technical Specification (TS) 3.3.11, ''Post Accident Monitoring Instrumentation (PAMI).'' Specifically, the proposed change would extend the PAMI channel calibration surveillance frequency from 18 months to 24 months to accommodate a 24-month fuel cycle. All PAMI instruments would then be on a 24-month calibration interval, which removes the need for Surveillance Requirement (SR) 3.3.11.5. Therefore, the licensee also proposes to delete SR 3.3.11.5.

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?

Response: No.

The proposed license amendment[s] to extend the calibration surveillance frequency of Post Accident Monitoring Instrumentation (PAMI) instrumentation [are] being made to support plant operation with a 24-month fuel cycle.

Increasing the calibration intervals for PAMI instrumentation to 30 months [24 months plus the 25% surveillance interval extension allowed by SR 3.0.2] does not affect the initiation or probability of any previously analyzed accident. Increasing the calibration interval will not affect the integrity of any of the principal barriers against radiation release (fuel cladding, reactor vessel, and containment building). The ability of the plant to mitigate the consequences of any previously analyzed accidents is not adversely affected.

PAMI instrumentation provides to the operators both qualitative and quantitative information used in accident mitigation and for the safe shutdown of the plant. Instrumentation which provides qualitative information is unaffected by a change in instrument accuracy induced by drift due to the increased surveillance interval because no explicit value is required by the Emergency Operating Instructions (EOIs). Instrumentation that provides quantitative information (*i.e.,* decision points) in the EOIs have been evaluated. This evaluation resulted in no changes to any operating instructions. This evaluation of the proposed change to the surveillance interval demonstrates that licensing basis safety analyses acceptance criteria and San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 EOI criteria will continue to be met.

The proposed new surveillance frequency for these instrument channels was evaluated using the guidance of Generic Letter 91–04. The basis for the change includes a quantitative evaluation of instrument drift for PAMI instrumentation providing quantitative information to the EOIs. Also, loop accuracy/setpoint calculations for these instruments were updated to accommodate the extended surveillance period. Analyses and evaluations completed to assess the proposed increase in the surveillance interval demonstrate that the effectiveness of these instruments in fulfilling their respective functions is maintained. Technical Specifications Channel Checks and Channel Functional Checks for the subject channels, will continue to be performed to provide assurance of instrument channel OPERABILITY.

Therefore, the proposed amendment[s do] not involve a significant increase in the probability or consequences of any previously analyzed accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The increased calibration surveillance interval for PAMI instrumentation is justified based on evaluation of past equipment performance and does not require any plant hardware changes or changes in normal system operation. Changing the calibration interval for this instrumentation has no means of creating the possibility of a new or different kind of accident. There are no new decision points or operator responses required to support existing accident mitigation strategies.

Therefore, there are no new failure modes introduced as a result of extending these surveillance intervals, and the proposed amendment[s do] not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety?

Response: No.

The proposed change to the calibration surveillance interval was evaluated using the criteria of 95% probability/95% confidence level for process sensor drift.

PAMI instrumentation are used to provide indication following certain hypothetical accident conditions and are used in EOIs for trending and to initiate operator action at certain decision points. Instrument uncertainty calculations have been updated for PAMI instrumentation used for EOI decision points as appropriate. Updated calculations show that the total loop uncertainty for PAMI evaluated either decreased or remained the same. These updated calculations demonstrate that applicable accuracy requirements for SONGS 2 and 3 are satisfied with the proposed new surveillance intervals.

Changing the calibration interval for these channels does not affect the margin of safety for previously analyzed accidents. Therefore, the proposed amendment[s do] not involve a significant reduction in a margin of safety.

Based on the responses to these three criteria, Southern California Edison (SCE) has concluded that the proposed amendment[s involve] no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: December 13, 1999 (PCN–507).

Description of amendment requests: San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 are currently licensed for operation for 40 years commencing with issuance of their construction permits. The licensee proposes to amend the SONGS Units 2 and 3 operating licenses to revise the expiration dates of these licenses to 40 years from the date of issuance of the operating licenses. Thus, these amendment applications request that the SONGS Unit 2 operating license expiration date be changed from October 18, 2013, to February 16, 2022, and the SONGS Unit 3 operating license expiration date be changed from October 18, 2013, to November 15, 2022.

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?

Response: The proposed change does not involve any changes to the design or operation of the San Onofre Nuclear Generating Station (SONGS) 2 and 3 which may affect the probability or consequences of an accident evaluated in the Updated Final Safety Analysis Report (UFSAR). SONGS 2 and 3 were designed and constructed on the basis of a forty (40) year life. The accidents analyzed in the UFSAR were postulated on the basis of a 40 year life. No changes will be made that could alter the design, construction, or postulated scenarios regarding accident initiation and/or response. Existing surveillance, inspection, testing and maintenance practices and procedures ensure that degradation in plant equipment, structures, and components will be identified and corrected throughout the life of the plant. The effect of aging of electrical equipment, in accordance with 10 CFR50.49, has been incorporated into the plant maintenance and surveillance procedures. Therefore, the probability or consequences of a postulated accident previously evaluated in the UFSAR are not increased as a result of the proposed change.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The proposed change does not involve any changes to the physical structures, components, or systems of SONGS 2 and 3. Existing surveillance, inspection, testing, and maintenance practices and procedures will assure full operability for the plant's design lifetime of 40 years. Continued operation of SONGS 2 and 3 in accordance with these approved procedures and practices will not create a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety?

Response: There are no changes in the design, design basis, or operation of SONGS 2 and 3 associated with the proposed change. Existing surveillance, inspection, testing, and maintenance practices and procedures provide assurance that any degradation of equipment, structures, or components will be identified and corrected throughout the lifetime of the plant. These measures together with the continued operation of SONGS 2 and 3 in accordance with the Technical Specifications assure an adequate margin of safety is preserved on a continuous basis. Therefore, the proposed change does not result in 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 requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: November 30, 1999.

Description of amendment request: The proposed amendments would change Technical Specification Surveillance Requirement 3.8.1.12 to remove the restriction which prevents performance of the diesel generator 24-hour run while operating in either Mode 1 or Mode 2.

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 the consequences of a previously evaluated event for the following reasons:

The primary function of the diesel generators is to supply emergency power to the safety-related equipment necessary to safely shut down the plant in case of a design basis event, such as a loss of coolant accident (LOCA) concurrent with a loss of offsite power (LOSP). The diesels are not designed to prevent such an event. Accordingly, the probability of a LOCA/LOSP event is not increased by allowing the performance of the 24-hour run with the reactor operating.

It is possible that, with a diesel generator connected to its bus, an electrical disturbance will travel through the system and affect the other busses. This is most likely to happen when initially connecting the diesel to the bus. However, the surveillance procedures require that diesel generator output voltage be synchronized with the bus prior to the diesel output breaker being closed in, thus reducing the chance of an electrical distribution system disturbance.

If a LOCA occurred concurrent with an LOSP while a diesel generator is connected to the bus in its 24-hour run, the diesel logic automatically realigns itself to the Standby mode of operation, allowing the diesel to supply power to the emergency bus. A Technical Specifications surveillance requirement tests this feature. Also, the proposed specification prevents the test from being performed unless the other two diesel generators are operable; this includes suspending the surveillance if one of the other available diesels becomes inoperable during the actual test. This restriction will ensure that two diesels are available to safely shut down the plant if necessary.

Additionally, this amendment request does not affect any other system or piece of equipment necessary to prevent or mitigate the consequences of previously evaluated events. As a result, the consequences of a LOCA/LOSP event are not increased.

2. The proposed changes do not create the possibility of an accident of a new or different kind from any previously evaluated based upon the following:

This proposed modification to SR 3.8.1.12 does not introduce any new modes of operation or testing. In fact, each diesel generator is already connected to its respective bus during operation to satisfy SR 3.8.1.2, the monthly test. In the monthly test, the diesel is run loaded for 1 hour, connected to the grid, with the unit in operation. Therefore, allowing the 24 hour test to be performed for the diesels introduces nothing new with respect to diesel testing, and as a result, the possibility of a new type of event is not created.

3. The change does not significantly reduce the margin of safety for the following reasons:

The probability of an electrical disturbance affecting plant operation while connecting the diesel to the bus is minimized by the fact that the diesel's output voltage and phase angle are synchronized with those of the grid prior to being tied to the emergency bus. Based on engineering judgement, with the diesel synchronized and running connected to the grid, the likelihood of an electrical disturbance being transferred through the system and causing a plant transient is very small. Furthermore, since only one diesel will be tied to the bus in either Mode 1 or Mode 2, neither of the other two diesel generators will be affected by the disturbance.

If a LOCA/LOSP occurred during the 24-hour run, the diesel generator's auto-logic would take the diesel out of the test mode. This feature is tested once per 18 months per Technical Specifications. With the diesel no longer in test, it would be free to once again tie itself to the bus. Additionally, only one diesel will be tied to the line during a 24-run performed with the reactor operating, with other diesel generators available to supply power to their respective emergency busses. This ensures two diesels are available to shut down the plant and maintain it in a safe condition.

Other precautions will also be placed into plant procedures; specifically, the 24-hour run will not be performed on line during periods of severe weather or during grid instabilities.

For the above reasons, the proposed Technical Specifications change will not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Richard L. Emch, Jr.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: November 18, 1999.

Description of amendment request: The proposed amendments would revise technical specification surveillance requirements 4.7.7, 4.7.8, and 4.9.12, on the control room makeup and cleanup filtration system and the fuel handling building exhaust air system, from a requirement that laboratory analysis of charcoal filter samples meets the laboratory testing criteria of Regulatory Position C.6.a of Regulatory Guide 1.52, ''Design, Testing, and Maintenance Criteria for Postaccident Engineered-Safety-Feature Atmosphere Cleanup System Air Filtration and Adsorption Units of Light-Water-Cooled Nuclear Power Plants,'' Revision 2, March 1978, to a requirement that the analysis meets the laboratory testing criteria of American Society for Testing and Materials ASTM D3803–1989, ''Standard Test Method for Nuclear-Grade Activated Carbon.''

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:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change revises the test protocol for Engineered Safety Feature charcoal filters from ASTM D3803–1979 to ASTM D3803–1989. The change in protocol is a conservative change in that the revised test conditions will more accurately reflect the functionality of the charcoal filters under accident conditions. There is no change in plant configuration or components. The tests are conducted under laboratory conditions, so that change in protocol has no effect on plant operation. There is no change in how samples are taken to be used in analyses.

Based on the above, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change revises the test protocol for Engineered Safety Feature charcoal filters from ASTM D3803–1979 to ASTM D3803–1989. The change in protocol is a conservative change in that the revised test conditions will more accurately reflect the functionality of the charcoal filters under accident conditions. There is no change in plant configuration or components. The tests are conducted under laboratory conditions, so that change in protocol has no effect on plant operation. There is no change in how samples are taken to be used in analyses.

Based on the above, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a significant reduction in a margin of safety.

The proposed change revises the test protocol for Engineered Safety Feature charcoal filters from ASTM D3803–1979 to ASTM D3803–1989. The change in protocol is a conservative change in that the revised test conditions will more accurately reflect the functionality of the charcoal filters under accident conditions. There is no change in plant configuration or components. The tests are conducted under laboratory conditions, so that change in protocol has no effect on plant operation. There is no change in how samples are taken to be used in analyses.

Based on the above, the margin of safety is not significantly reduced by this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: December 6, 1999.

Description of amendment request: The proposed amendments would revise Technical Specification Definition 1.9, ''Core Alterations,'' to explicitly define core alterations as the movement of any fuel, sources, or reactivity control components within the reactor vessel with the vessel head removed and fuel in the vessel.

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 change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not involve an increase in the probability or consequences of an accident previously evaluated. The proposed change does not involve any physical changes to the facility. The change to the definition of core alterations is consistent with that used in NUREG–1431, Revision 1, ''Improved Standard Technical Specifications for Westinghouse Plants.'' The proposed revision to the definition of core alterations will not affect the Technical Specifications Section 3/4.9, ''Refueling Operations'', requirements which ensure the core remains subcritical, nor will any Limiting Condition for Operation required for core alterations or the movement of fuel be changed. The proposed change will not affect any safety margin or safety limit applicable to the facility. Therefore, the proposed change does not involve an increase in the probability or consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not affect any previously evaluated accident scenario, nor does it create any new accident scenarios. The proposed change is a clarifying revision to the definition of core alterations only, and will not alter any of the currently approved refueling operation activities, nor will it create any new refueling operation activities.

Since the proposed change does not impact operation of the facility as presently approved, no possibility exists for a new or different kind of accident from those previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

South Texas Project Technical Specification 3/4.9.1, ''Boron Concentration'', ensures that the reactor will remain subcritical ($K_{eff} \le 0.95$) during core alterations and that uniform boron concentration is maintained for reactivity control in the water volume having direct access with the reactor vessel. The proposed change in the definition of core alterations will allow ''non-reactive'' components, such as cameras, lights, tools, movable incore detector thimbles, etc., to be moved or manipulated in the vessel, with fuel in the vessel and the vessel head removed, without constituting a core alteration. This is acceptable because these types of components will have negligible effect on core reactivity, and will not affect reactor coolant system boron concentration. Therefore, operations using these types of components will not adversely affect K_{eff} or the shutdown margin. Additionally, reactor subcriticality status is continuously monitored in the control room during Operating Mode 6, as specified in Specification 3/4.9.2, ''Instrumentation''. Thus, there will be no reduction in a margin of safety resulting from the proposed change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: October 14, 1999 (TS 99–12).

Brief description of amendments: The proposed amendments would change the Sequoyah (SQN) Operating Licenses DPR–77 (Unit 1) and DPR–79 (Unit 2) by revising the Technical Specification (TS) surveillance requirements for steam generator tube integrity by incorporating an alternate repair criteria for axial primary water stress corrosion cracking at dented tube support plate intersections.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), 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.

Operation of Sequoyah Units 1 and 2, in accordance with the proposed license amendment, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Examination of crack morphology for primary water stress corrosion cracking (PWSCC) at dented intersections has been found to show one or two microcracks well aligned with only a few uncorroded ligaments and little or no other inside diameter axial cracking at the intersection. This relatively simple morphology is conducive to obtaining good accuracy in Non-destructive Examination (NDE) sizing of these indications. Accordingly, alternate repair criteria is established based on crack length and average and maximum depth within the thickness of the tube support plate (TSP) or limited extension outside the thickness of the TSP.

The application of the alternate repair criteria (ARC) requires a condition monitoring assessment. If all indications satisfy the structural limits with regard to bounding lengths and average depths, the condition monitoring burst pressure requirements are satisfied.

In addition, an operational assessment is performed to determine the length/depth repair bases. The crack profiles are projected to the end of the operating cycle for comparison with acceptance limits (i.e., length limit and average depth limit). Burst pressures are calculated from the depth profiles by searching the total crack length for the partial length that results in the lowest burst pressure. Because the burst pressure can be lower than that for the longest acceptable crack length at its average depth, a fixed repair limit is not established. The repair bases is obtained by projecting the crack profile to the end of the next operating cycle and determining if the burst pressure for the projected profile meets the burst pressure margin requirements defined by [Westinghouse Topical Report] WCAP–15128, Revision 1, dated August 1999. If the projected end-of-cycle (EOC) burst margin requirements are satisfied, the indication is left in service. Thus, the repair limit relative to length and average depth assures that the operational assessment requirements are satisfied.

Crack length limits are established in the WCAP to assure that crack extension and growth outside of the TSP provides adequate margin against burst for the free-span crack (*i.e.,* $3DP_{NO}$ burst capability is maintained) in addition to the total crack length. A repair limit is also established in the WCAP for maximum depth to provide a high confidence that the indication will not progress through the wall at the end of an operating cycle.

Based on the above, the proposed amendment does not result in any increase in the probability or consequences of an accident previously evaluated within the Sequoyah FSAR [Final Safety Analysis Report].

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the proposed S/G [steam generator] tube ARC does not introduce any significant changes to the plant design basis. A single or multiple tube rupture event would not be expected in a S/G in which the plugging criteria has been applied. Both condition monitoring and operational assessments are completed as part of the implementation of ARC to determine that structural and leakage margin exists prior to returning S/Gs to service following inspections. If the condition monitoring requirements are not satisfied for burst or leakage, the causal factors for EOC indications exceeding the expected values will be evaluated. The methodology and application of this ARC will continue to ensure that tube integrity is maintained during all plant conditions consistent with the requirements of draft RG [Regulatory Guide] 1.121 and Revision 1 of RG 1.83.

A S/G tube rupture event is one of a number of design basis accidents that are analyzed as part of a plant's licensing basis. In the analysis of a S/G tube rupture event, a bounding primary-to-secondary leakage rate equal to the operational leakage limits in the TSs, plus the leak rate associated with the double ended rupture of a single tube, is assumed. For other design basis accidents such as a main steam line break and loss of alternating current power, the tubes are assumed to retain their structural integrity and exhibit primary-to-secondary leakage within the limits assumed in Final Safety Analysis Report (FSAR) accident analyses. The proposed ARC does not result in an accident leakage rate in excess of that assumed or calculated in SQN's current accident analyses.

Even under severe accident conditions, the potential for significant leakage would be expected to be small and not significantly different than for other degradation mechanisms repaired to 40 percent depth limits. It is concluded that application of the proposed ARC for PWSCC at dented TSP locations results in a negligible difference from current 40-percent repair limits.

TVA continues to implement a maximum operating condition leak rate limit of 150 gallons per day (0.1 gallons per minute) per S/G to preclude the potential for excessive leakage during all plant conditions.

The possibility of a new or different kind of accident from any previously evaluated is not created because S/G tube integrity is maintained by inservice inspection and effective primary-to-secondary leakage monitoring.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

Tube repair limits provide reasonable assurance that tubes accepted for continued service without plugging or repair will exhibit adequate tube structural and leakage integrity during subsequent plant operation. The implementation of the proposed ARC is demonstrated to maintain S/G tube integrity consistent with the criteria of draft NRC Regulatory Guide 1.121. The guidelines of RG 1.121 describe a method acceptable to the NRC staff for meeting General Design Criteria (GDC) 2, 4, 14, 15, 31, and 32 by ensuring the probability or the consequences of S/G tube rupture remain within acceptable limits. This is accomplished by determining the limiting conditions of degradation of S/G tubing, for which tubes with unacceptable cracking should be removed from service.

Upon implementation of the proposed ARC, even under the worst-case conditions, the occurrence of PWSCC at the tube support plate elevations is not expected to lead to a S/G rupture event during normal or faulted plant conditions. All tubes are shown to retain the margins of safety against burst consistent with the safety factor margins implicit in the stress limit criteria of Section III of the American Society of Mechanical Engineers [ASME] Code, for all service loading conditions. In addition, all tubes have been shown to retain a margin of safety against gross failure or burst consistent with the stress limits of [Paragraph] NB–3225 of Section III of the ASME Code under postulated accident conditions concurrent with a safe shutdown earthquake.

In addressing the combined effects of loss-of-coolant accident plus safe shutdown earthquake on the S/G component (as required by GDC 2), it has been determined that tube collapse will not occur in the Sequoyah S/Gs. This analysis is discussed in WCAP 13990, dated May 1994. No tubes are excluded from the application of the proposed ARC.

Based on the above, it is concluded that the proposed license amendment request does not result in a significant reduction in margin with respect to the plant safety analyses as defined in the FSAR or TSs.

The NRC 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.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard P. Correia.

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: November 8, 1999.

Brief description of amendments: The proposed amendments would change Technical Specification 5.5.11, ''Ventilation Filter Testing Program (VFTP)'' to include the requirement for laboratory testing of Engineered Safety Feature (ESF) Ventilation System charcoal samples per American Society for Testing and Materials (ASTM) D3803–1989 and the application of a safety factor of 2.0 to the charcoal filter efficiency assumed in the plant design-basis dose analyses.

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) Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes only involve the laboratory testing methodology performed on activated charcoal to help determine whether the charcoal in the filtration units can remain in place or [if it] require[s] replacement.

Generic Letter 99–02 intends to standardize the way nuclear-grade activated charcoal is tested throughout the industry in order to provide conservative filtration results as well as uniform and repeatable tests. The purpose is to ensure the filtration systems protect the Operators in the Control Room (GDC [General Design Criterion] 19) as well as the public (10CFR100), in the event of a radiological accident scenario.

The charcoal adsorber sample laboratory testing per ASTM D3803–1989 is more stringent than the current testing practice and more accurately demonstrates the required performance of the adsorbers following a design ba[s]is LOCA [loss of coolant accident]. No Licensing Basis Accidents or mitigation capability will be affected by incorporation of these changes.

Therefore, this change will not result in a significant increase in the probability or consequences of an accident previously evaluated.

(2) Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

Plant procedures are only altered to the extent that the revised specification will allow different reference standards for testing activated charcoal. These changes ensure continued support of the safety related ESF filtration equipment and do not affect their failure or failure modes.

Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Do the proposed changes involve a significant reduction in a margin of safety?

None of the changes being proposed alter the environmental conditions maintained in the areas supported by the ESF filtration systems during normal operations and following an accident. Also these changes will not cause an increase in radiological releases through the Primary Plant Ventilation Exhaust System. As a result, the margin of safety for these functions remains the same.

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.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: December 3, 1999 (ULNRC–04158).

Description of amendment request: The proposed amendment requested changes to Section 5.6.6, ''Reactor Coolant System (RCS) Pressure and Temperature Limits Report (PTLR),'' of the improved Technical Specifications (ITS) that were issued on May 28, 1999, in Amendment No. 133. The current Technical Specifications (CTS) remain in effect until the ITS are implemented on or before April 30, 2000. The proposed changes to the ITS would approve the use of the PTLR by the licensee to make changes to the plant pressure temperature limits and low temperature overpressure protection limits without prior NRC staff approval in accordance with Generic Letter 96–03, ''Relocation of the Pressure Temperature Limit Curves and Low Temperature Overpressure Protection System Limits,'' dated January 31, 1996. The proposed changes are: (1) Add the word criticality to ITS Subsection 5.6.6.a as one of the reactor conditions for which RCS pressure and temperature limits will be determined, (2) add the phrase ''and COMS PORV,'' where COMS PORV stands for cold overpressure mitigation system power operated relief valve, to the the introductory paragraph of ITS subsection 5.6.6.b to show that the analytical methods listed in the subsection are also for the COMS PORV, and (3) replace the two documents listed in ITS subsection 5.6.6.b by the reference to the future NRC letter that approves the use of the PTLR and the Westinghouse Topical Report, WCAP–14040–NP–A, Revision 2, ''Methodology Used to Develop Cold Overpressure Mitigating System Setpoints and RCS Heatup and Cooldown Limit Curves,'' dated January 1996, that provides the methodology that will be used by the licensee in using the PTLR report. The current plant pressure temperature limits and low temperature overpressure protection limits are in the CTS and were approved in Amendment No. 124, which was issued April 2, 1998.

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 submits the PTLR, which contains the relocated CTS heatup and cooldown, and COMS PORV limits and the methodology used to calculate them, and the added references into ITS 5.6.6. The proposed change is administrative in nature since it is a movement of information from the CTS to a licensee controlled document, and has prior NRC staff approval. The PTLR contains the limit curves and the ITS requires more restrictive actions to be taken when the limiting conditions for operation are not met than is currently required by the CTS. The heatup and cooldown, and COMS PORV limits within the PTLR will be implemented and controlled per Callaway Plant programs and procedures and changes to the PTLR will be performed per requirements of 10 CFR 50.59 to ensure that change to these limits in the future will 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.

As stated earlier, the movement of the heatup and cooldown, and COMS PORV limits from the CTS to the PTLR has no influence or impact, nor does it contribute in any way to the probability or consequences of an accident. No safety-related equipment, safety function, or plant operations will be altered as a result of this proposed change. The proposed change is administrative in nature since it is a movement of requirements from the CTS to a licensee controlled document, the PTLR, and the change adds references into the ITS incorporating the licensee controlled document. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not affect the acceptance criteria for an analyzed event. The margin of safety presently provided by the CTS remains unchanged. There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protective functions. Therefore, the proposed change is administrative in nature and does not impact the operation of Callaway Plant in a manner that involves 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.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Section Chief: Stephen Dembek.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: November 5, 1999, as supplemented on December 3, 1999.

Description of amendment request: This proposed change revises the applicability for the reactor power distribution limits and the Average Power Range Monitor (APRM) gain adjustments. The applicability is proposed to be revised to operation at ≥25% Rated Thermal Power (RTP).

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 Vermont Yankee Nuclear Power Station in accordance with 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 an increase in the probability or consequences of an accident previously evaluated because the revisions standardize and make consistent the applicability and actions for the reactor power distribution limits in the current Technical Specifications. Since reactor operation with these revised Specifications is fundamentally unchanged, no design or analytical acceptance criteria will be exceeded. As such, this change does not impact initiators of analyzed events or assumed mitigation of accident or transient events. The structural and functional integrity of plant systems is unaffected. Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station 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 affect any parameters or conditions that could contribute to the initiation of any accident. No new accident modes are created. No safety-related equipment or safety functions are altered as a result of these changes. Therefore, 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 Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

At thermal power levels < 25% RTP, the reactor is operating with substantial margin to the reactor power distribution limits [and this margin is unchanged]. The proposed change does not impact operation at power levels ≥ 25% RTP and has no effect on any safety analysis assumption or initial condition. Thus, the margin of safety required for safety analyses [is] maintained. Therefore, the proposed 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.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant (PBNP), Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: November 15, 1999 (TSCR 202).

Description of amendment request: The proposed amendments would change the Technical Specifications (TSs) in order to extend the required frequency of the control rod exercise test (TS 15.4.1, Table 15.4.1–2, Item 10) from the current frequency of every 2 weeks to quarterly.

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 Point Beach Nuclear Plant in accordance with the proposed amendments will not result in a significant increase in the probability or consequences of an accident previously evaluated.

Relaxing the frequency of performance for a surveillance does not result in any hardware changes, nor does it significantly increase the probability of occurrence for initiation of any analyzed events since the function of the equipment has remained unchanged. The proposed frequency has been determined to be adequate based on industry operating data as supported by the conclusions reached in NUREG 1366 and NRC GL [Generic Letter] 93–05.

Surveillance tests are intended to provide assurance of continued component operability. The frequency of performance of a surveillance does not significantly increase the consequences of an accident, as a change in frequency does not change the response of the equipment in performing its specified function (i.e. the overall functional capabilities of the rod control system will not be modified). Increasing the interval of control rod exercise testing will reduce the possibility of inadvertent testing related [to] reactor trips and dropped rods, and resulting in fewer challenges to safety systems and resultant plant transients.

This change does not involve a significant increase in the consequences of an accident or event previously evaluated because the source term, containment isolation or radiological releases are not being changed by the proposed revision. Existing system and component redundancy and operation is not being changed by the proposed change. The assumptions used in evaluating the radiological consequences in the PBNP Final Safety Analysis Report are not invalidated. Therefore, this change does not affect the consequences of previously evaluated accidents.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change does not introduce nor increase the number of failure mechanisms of a new or different type of accident than those previously evaluated since there are no physical changes being made to the facility. The design and design basis of the facility remain unchanged. The plant safety analyses remain unchanged. All equipment important to safety will continue to operate as designed. Component integrity is not challenged. The changes do not result in any event previously deemed incredible being made credible. The changes do not result in more adverse conditions nor result in any increase in challenges to safety systems. Therefore, operation of the Point Beach Nuclear Plant in accordance with the proposed amendment will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not involve a significant reduction in a margin of safety.

The proposed change does not involve a significant reduction in the margin of safety because existing component redundancy is not being changed by this proposed change. There are no changes to initial conditions contributing to accident severity or consequences. The proposed surveillance frequency, as supported by past test results, continues to provide the required assurance of operability, such that safety margins established through the design and facility license, including the Technical Specifications, remain unchanged. Therefore, there are no significant reductions in a margin of safety introduced by this proposed amendment.

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.

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Claudia M. Craig.

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 notice was previously published as a separate individual notice. The notice content was the same as above. It was published as an individual notice either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. It is 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.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: October 20, 1999.

Brief description of amendment: The amendment changed the footnote to the Improved Technical Specifications associated with the Design Features Fuel Storage Specification 4.3.1.1.b which required that 2300 ppm boron be maintained in the Spent Fuel Pool.

Date of publication of individual notice in **Federal Register**: November 19, 1999 (64 FR 63346).

Expiration date of individual notice: December 20, 1999.

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 electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: September 14, 1999.

Brief description of amendments: The amendments approve the administrative changes to PVNGS TS 5.5.2, Primary Coolant Sources Outside Containment, to delete the references to the post-accident sampling return piping of the radioactive waste gas system and the liquid radwaste system, and TS 5.6.2, Annual Radiological Environmental Operating Report, to delete the administrative requirement to include in the report certain TLD [thermoluminescence dosimeter] results that are no longer available.

Date of issuance: November 24, 1999.

Effective date: November 24, 1999, to be implemented within 60 days.

Amendment Nos.: Unit 1—122, Unit 2—121, Unit 3—121.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 20, 1999 (64 FR 56528).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 24, 1999.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: October 21, 1999.

Brief description of amendment: This amendment revises Technical Specifications (TS) for the Shearon Harris Nuclear Power Plant by implementing selected improvements described in NRC Generic Letter (GL) 93–05, ''Line-Item Technical Specifications To Reduce Surveillance Requirements For Testing During Power Operation,'' dated September 27, 1993.

Date of issuance: December 17, 1999.

Effective date: December 17, 1999.

Amendment No: 93.

Facility Operating License No. NPF–63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: November 17, 1999 (64 FR 62705).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 17, 1999.

No significant hazards consideration comments received: No.

CBS Corporation, Docket No. 50–22, Westinghouse Test Reactor, Waltz Mill, Pennsylvania

Date of application for amendment: September 15, 1999, as supplemented on October 4, 1999.

Brief description of amendment: This amendment changes the decommissioning Technical Specifications dealing with controls for ingress, egress, and equipment removal from containment.

Date of issuance: December 7, 1999.

Effective Date: December 7, 1999.

Amendment No: 11.

Facility License No. TR–2: This amendment changes the decommissioning Technical Specifications.

Date of initial notice in **Federal Register**: November 3, 1999 (64 FR 59798).

The Commission has issued a Safety Evaluation for this amendment dated December 7, 1999.

No significant hazards consideration comments received: No.

Consolidated Edison Company of New York, Inc., Docket No. 50–003, Indian Point Nuclear Generating Station, Unit 1, Buchanan, New York

Date of application for amendment: July 20, 1999.

Brief description of amendment: The amendment would revise the Technical Specifications to change the senior license requirements for the Operations Manager.

Date of issuance: December 15, 1999.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No: 46.

Facility Operating License No. DPR–5: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 2, 1999 (64 FR 49027).

The July 20, 1999, letter providing clarifying information that did not change the scope of the original application and proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 15, 1999.

No significant hazards consideration comments received: No.

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: May 5, 1999, as supplemented June 22 and July 30, 1999.

Brief description of amendments: These amendments conform the licenses to reflect the transfer of Operating Licenses Nos. DPR–66 and NPF–73 for the Beaver Valley Power Station Unit Nos. 1 and 2, to the extent held by Duquesne Light Company (DLC) to the Pennsylvania Power Company, and the operating authority under the licenses from DLC to FirstEnergy Nuclear Operating Company as previously approved by an Order dated September 30, 1999.

Date of issuance: December 3, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 226 and 104.

Facility Operating License Nos. DPR–66 and NPF–73: These amendments revised the Operating Licenses.

Date of initial notice in **Federal Register**: June 14, 1999 (64 FR 31880).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 30, 1999. The June 22 and July 30, 1999, supplements were within the scope of the initial application as originally noticed.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of application for amendment: September 14, 1999.

Brief description of amendment: This amendment eliminates License Condition 2.C.10 of the Operating License regarding controls over the containment air locks during plant outages and modifies License Condition 2.F of the Operating License regarding reporting requirements for violations of the Technical Specifications and the Environmental Protection Plan.

Date of issuance: December 15, 1999.

Effective date: December 15, 1999.

Amendment No.: 109.

Facility Operating License No. NPF–58: This amendment revised the Operating License.

Date of initial notice in **Federal Register**: November 3, 1999 (64 FR 59803).

The Commission's related evaluation of the amendment is contained in a

Safety Evaluation dated December 15, 1999.

No significant hazards consideration comments received: No.

GPU Nuclear, Inc., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: June 29, 1999, as supplemented August 27, October 29, and November 3, 1999.

Brief description of amendment: The amendment clarifies the authority to possess certain types of radioactive materials and components at either Unit 1 or Unit 2. Following the transfer of the Three Mile Island, Unit 1 (TMI–1), operating license to AmerGen, these items, under the amendment, may continue to be moved between the TMI–1 and TMI–2 units as they currently are.

Date of issuance: December 9, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 217.

Facility Operating License No. DPR–50: Amendment revised the License.

Date of initial notice in **Federal Register**: July 12, 1999 (64 FR 37572). The August 27, October 29, and November 3, 1999, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the amendment beyond the scope of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 9, 1999.

No significant hazards consideration comments received: No.

GPU Nuclear, Inc., Docket No. 50–320, Three Mile Island Nuclear Station, Unit 2, (TMI–2) Middletown, Pennsylvania

Date of application for amendment: June 29, 1999, as supplemented by letters dated August 27, October 29, and November 3, 1999.

Brief description of amendment: The amendment adds a provision to the license conditions to ensure that the storage of certain types of radioactive materials and components at Three Mile Island (TMI), Unit 2, pursuant to the TMI, Unit 1 license, does not result in a source term that would exceed the limits in the TMI, Unit 2 Post-Defueling Monitored Storage Safety Analysis Report.

Date of issuance: December 14, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 53.

Facility Operating License No. DPR–73: Amendment revised the License.

Date of initial notice in **Federal Register**: July 12, 1999 (64 FR 37572). The August 27, October 29, and November 3, 1999, supplements provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the amendment beyond the scope of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 14, 1999.

No significant hazards consideration comments received: No.

Illinois Power Company, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: July 23, 1999, as supplemented July 30, August 9, August 20, October 7, and October 11, 1999.

Brief description of amendment: The amendment replaces references to Illinois Power Company in the Operating License with references to AmerGen Energy Company, LLC, to reflect the transfer of the license as approved by an Order dated November 24, 1999.

Date of issuance: December 15, 1999.

Effective date: December 15, 1999.

Amendment No.: 123.

Facility Operating License No. NPF–62: The amendment revised the Operating License.

Date of initial notice in **Federal Register**: August 19, 1999 (64 FR 45290).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 24, 1999.

Comments received: Yes. Comments received from The Environmental Law and Policy Center of the Midwest were addressed in the staff's safety evaluation.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: September 23, 1999, as supplemented October 11 and November 10, 1999.

Brief description of amendments: The amendments provide approval to move steam generator sections through the auxiliary building and to disengage crane travel interlocks, and provide relief from performance of Technical Specification Surveillance Requirement 4.9.7.1. The loads to be moved are in support of the Unit 1 Steam Generator Replacement Project.

Date of issuance: December 7, 1999.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 233 and 216.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 26, 1999 (64 FR 57665). The October 11, 1999, submittal provided corrected TS pages. The November 10, 1999, submittal was in response to a NRC request for additional information dated October 26, 1999, and provided clarifying information to the original submittal. This information was 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 amendments is contained in a Safety Evaluation dated December 7, 1999.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: October 1, 1999, as supplemented November 19, 1999.

Brief description of amendments: The amendments involve the resolution of an unreviewed safety question related to certain small-break loss-of-coolant accident scenarios for which there may not be sufficient containment recirculation sump water inventory to support continued operation of the emergency core cooling system and containment spray system pumps during and following switchover to cold leg recirculation. Resolution of this issue consists of a combination of physical plant modifications, new analyses of containment recirculation sump inventory, and resultant changes to the accident analyses to ensure sufficient water inventory in the containment recirculation sump. The amendments would also change the Technical Specifications dealing with the refueling water storage tank inventory and temperature, the required amount of ice in each ice basket in the containment, and the delay to start the containment air recirculation/hydrogen skimmer fans.

Date of issuance: December 13, 1999.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 234 and 217.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 29, 1999 (64 FR 58458).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 13, 1999.

No significant hazards consideration comments received: No.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: February 12, 1999.

Brief description of amendment: The amendment changes the Technical Specifications to (1) allow reactor vessel hydrostatic and leakage tests when reactor coolant temperature is above 212°F without maintaining primary containment integrity and (2) establish a limit and a surveillance requirement on reactor coolant activity when reactor coolant temperature is above 212°F, the reactor is not critical, and primary containment has not been established.

Date of issuance: November 24, 1999.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment No.: 107.

Facility Operating License No. DPR–22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 24, 1999 (64 FR 14283).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 24, 1999.

No significant hazards consideration comments received: No.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: September 30, 1999.

Brief description of amendment: The amendment changes the Technical Specification surveillance periodicity requirements for the control room emergency filtration system.

Date of issuance: December 8, 1999.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment No.: 108.

Facility Operating License No. DPR–22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 3, 1999 (64 FR 59805).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 8, 1999.

No significant hazards consideration comments received: No.

PECO Energy Company, Public Service Electric and Gas Company,Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50–278, Peach Bottom Atomic Power Station, Unit No. 3, York County, Pennsylvania

Date of application for amendment: March 1, 1999, as supplemented June 14, October 1 and October 6, 1999.

Brief description of amendment: The amendment supports the installation of a digital Power Range Neutron Monitoring system and the incorporation of the long-term thermal-hydraulic stability solution hardware.

Date of issuance: October 14, 1999.

Effective date: Effective as of date of issuance and shall be implemented prior to restart from the Peach Bottom Atomic Power Station, Unit 3, October 1999 refueling outage.

Amendment No.: 234.

Facility Operating License No. DPR–56: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 2, 1999 (64 FR 29711). The June 14, October 1 and October 6, 1999, provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 14, 1999.

No significant hazards consideration comments received: No.

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 application for amendment: April 6, 1999.

Brief description of amendment: The amendment changes the Technical Specifications by removing the words ''three individual underground'' and ''underground'' from the limiting conditions for operation when referring to the emergency diesel generator fuel oil storage tanks in Sections 3.7.A.5 and 3.7.F.4.

Date of issuance: December 7, 1999.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 198.

Facility Operating License No. DPR–64: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: June 2, 1999 (64 FR 29713).

No significant hazards consideration comments received: No.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 7, 1999.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., (SNC) Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Dates of amendments request: March 12, 1998, as supplemented by letters of April 24, 1998, August 20, 1998, November 20, 1998, February 3, 1999, February 20, 1999, April 30, 1999 (two letters), May 28, 1999, June 30, 1999, July 27, 1999, August 19, 1999, August 30, 1999, September 15, 1999, and September 23, 1999.

Brief description of amendments: The amendments fully convert SNC's Current TS (CTS) to Improved TS (ITS) based on NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants,'' Revision 1, of April 1995. The amendments add two new Additional Conditions to Appendix C of the Unit 1 and Unit 2 Facility Operating Licenses. The first new Additional Condition authorizes SNC to relocate certain CTS requirements to SNC-controlled documents. The second new condition addresses the schedule for performing new and revised ITS surveillances.

Date of issuance: November 30, 1999.

Effective date: As of the date of issuance and shall be implemented no later than March 31, 2000.

Amendment Nos.: 146 and 137.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments fully convert SNC's CTS to ITS.

Dates of initial notices in **Federal Register:** May 25, 1999 (64 FR 28218) and August 25, 1999 (64 FR 46443). The supplemental letters dated April 24, 1998, August 20, 1998, November 20, 1998, February 3, 1999, February 20, 1999, April 30, 1999 (two letters), May 28, 1999, June 30, 1999, July 27, 1999, August 19, 1999, August 30, 1999, September 15, 1999, and September 23, 1999, provided clarifying information that did not change the initial proposed no significant hazards consideration determinations.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 30, 1999.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: April 28, 1999.

Brief description of amendments: The amendments revised Vogtle's operating licenses to allow the licensee to establish containment hydrogen monitoring within 90 minutes of initiation of a safety injection following a loss-of-coolant accident, compared to the current 30 minute requirement.

Date of issuance: December 8, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 110 and 88.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Operating Licenses.

Date of initial notice in **Federal Register:** August 11, 1999 (64 FR 43779).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 8, 1999.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: July 28, 1998, as supplemented by letters dated May 31 and October 21 (2 letters), 1999.

Brief description of amendments: The amendments authorize the revision of the South Texas Project updated final safety analysis report (UFSAR) to allow the use of operator action to reduce the steam generator power-operated relief valve setpoint consistent with the revised small-break loss-of-coolant accident analysis for the replacement Delta 94 SGs.

Date of issuance: December 14, 1999.

Effective date: December 14, 1999. Revisions will be incorporated into the next UFSAR update in accordance with the schedule in 10 CFR 50.71(e).

Amendment Nos.: Unit 1—119, Unit 2—107.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments authorize revision of the UFSAR.

Date of initial notice in **Federal Register:** September 9, 1998 (63 FR 48268).

The May 31 and October 21 (2 letters), 1999, supplements provided additional clarifying information. One of the October 21, 1999, supplements also provided a revised UFSAR pages. This information was within the scope of the original application and **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 14, 1999.

No significant hazards consideration comments received: No.

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: September 30, 1999.

Description of amendment request: The amendments revise the operating licenses to remove license conditions that have become outdated, are no longer applicable, or are redundant, and to consolidate license conditions which currently exist in two locations in each units license.

Date of issuance: December 16, 1999.

Effective date: December 16, 1999.

Amendment Nos.: 237, 262, and 222.

Facility Operating License Nos. DPR–33, DPR–52, and DPR–68: Amendments revised the licenses.

Date of initial notice in **Federal Register:** November 3, 1999 (64 FR 59807).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 16, 1999.

No significant hazards consideration comments received: No.

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: February 27, 1998, as supplemented by letters dated June 10, 1998, and October 22, 1999.

Brief description of amendments: The amendments change the refueling water storage tank (RWST) low-low level setpoints in Technical Specification Table 3.3.2–1, ''Engineered Safety Feature Actuation System Instrumentation,'' to increase the volume of water available to containment spray pumps when the containment spray system switches to the recirculation mode of operation.

Date of issuance: December 8, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 73 and 73.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 15, 1998 (63 FR 38205). The October 22, 1999, supplement provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the application beyond the scope described in the initial notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 8, 1999.

No significant hazards consideration comments received: No.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: August 18, 1999.

Brief description of amendment: The amendment revises the reactor core spiral reloading pattern such that it begins around a source range monitor. The offloading pattern is the reverse sequence.

Date of Issuance: December 14, 1999.

Effective date: As of its date of issuance, and shall be implemented within 30 days.

Amendment No.: 181.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 8, 1999 (64 FR 48867).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated December 14, 1999.

No significant hazards consideration comments received: No.

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: September 23, 1998.

Brief description of amendments: The amendments revise the Technical Specifications (TSs) by deleting the test requirements for snubbers from the TSs. These requirements are already included in the Point Beach Nuclear Plant In-Service Inspection Program.

Date of issuance: December 6, 1999.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 191 and 196.

Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1998 (63 FR 71977).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 6, 1999.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: December 29, 1998, as supplemented by letters dated July 29 and October 21, 1999.

Brief description of amendment: The amendment revised (1) the reactor coolant system (RCS) heatup and cooldown limit curves in Figures 3.4–2 and 3.4–3 and cold overpressure mitigation system power-operated relief valve setpoint limit curve in Figure 3.4–4 of the current TSs, and (2) the list of references in Section 5.6.6 on the RCS pressure temperature limits report (PTLR) in the improved TSs. The improved TSs were issued in Amendment No. 123, dated March 31, 1999, to replace the current TSs, but have not yet been implemented. The revision to Section 5.6.6 of the improved TSs replaced the previous references to NRC documents giving criteria for the above limit curves in the current TSs by the references to (1) the NRC letter of December 2, 1999, that approved the use of the PTLR of Generic Letter 96–03, ''Relocation of the Pressure Temperature Limit Curves and Low Temperature Overpressure Protection System Limits,'' dated January 31, 1996, for WCGS, and (2) WCAP–14040–NP–A, ''Methodology Used to Develop Cold Overpressure Mitigation System Setpoints and RCS Heatup and Cooldown Limit Curves.'' The PTLR will provide the methodology for the licensee to revise the heatup and cooldown and setpoint limit curves for WCGS in the future without prior staff approval, after the improved TSs are implemented and have replaced the current TSs. The improved TSs are to be implemented by December 31, 1999.

Date of issuance: December 7, 1999.

Effective date: December 7, 1999, to be implemented by December 31, 1999.

Amendment No.: 130.

Facility Operating License No. NPF–42. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 24, 1999 (64 FR 9023) and September 8, 1999 (64 FR 48869). The October 21, 1999, supplemental letter provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 7, 1999.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: November 8, 1999.

Brief description of amendment: The amendment corrects 15 errors in the improved Technical Specifications that was issued in Amendment No. 123 on March 31, 1999. In addition, four corrections to Table LG, ''Details Relocated from Current Technical Specifications [CTS],'' that was attached to the safety evaluation dated March 31, 1999, issued with Amendment No. 123 were made.

Date of issuance: December 16, 1999.

Effective date: December 16, 1999, to be implemented December 31, 1999.

Amendment No.: 131.

Facility Operating License No. NPF–42. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 16, 1999 (64 FR 62231).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 16, 1999.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 8th day of December 1999.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Deputy Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–33684 Filed 12–28–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Amendment to a System of Records

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice of a new system of records.

SUMMARY: OPM proposes to add a new system of records to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of record systems maintained by the agency (5 U.S.C.552a(e)(4)).

DATES: The changes will be effective without further notice February 8, 2000, unless comments are received that would result in a contrary determination.

ADDRESSES: Send written comments to the Office of Personnel Management, ATTN: Mary Beth Smith-Toomey, Office of the Chief Information Officer, 1900 E Street NW., Room 5415, Washington, DC 20415–7900.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey, (202) 606-8358.

SUPPLEMENTARY INFORMATION: The photo identification and visitor access records system was established to improve security in OPM facilities. This system allows the system manager to control and/or monitor access to the building and sensitive areas within the building.

Office of Personnel Management.

Janice R. Lachance,

Director.

OPM/INTERNAL–14

SYSTEM NAME:

Photo Identification and Visitor Access Control Records.

SYSTEM LOCATION:

U.S. Office of Personnel Management, Office of Contracting and Administrative Services, 1900 E Street NW., Washington, DC 20415–7100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals visiting OPM facilities, OPM employees, contractors, and retirees seeking access to OPM facilities and classified records.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of individuals visiting OPM and employees, contractors, and retirees identification files (including photographs) maintained for access purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Property and Administrative Services of 1949, as amended, and 40 U.S.C. 486(c).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine use 1 of the Prefatory Statement at the beginning of OPM's system notices (60 FR 63075, effective January 17, 1996) applies to the records maintained within the system. The are no routine uses unique to this system of records.

PURPOSE(S):

OPM will use the records to issue official U.S. Government Identification cards to OPM employees and contract employees requiring access to OPM building and offices. The records will also be used to maintain a record of all holders of identification cards, for renewal and recovery of expired cards, and to identify lost or stolen cards.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in an automated database.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Access is limited to security and guard force personnel. Records are stored in guarded security areas.

RETENTION AND DISPOSAL:

Records are destroyed 3 months after they are returned to the issuing office.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Office of Personnel Management, Office of Contracting & Administrative Services, Facilities Services Division, Security Office, Washington, DC 20415–7100.

NOTIFICATION PROCEDURE:

OPM employees wishing to inquire whether this system of records contains information about them should contact the system manager indicated. Individuals must furnish their full names for their records to be located and identified.

RECORD ACCESS PROCEDURE:

OPM employees wishing to request access to records about them should contact the system manager indicated. Individuals must furnish their full names for their records to be located and identified.

CONTESTING RECORD PROCEDURES:

OPM employees wishing to request amendment of their records should contact the system manager indicated. Individuals must furnish their full names for their records to be located and identified.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from:

a. The individual to whom the records pertain.

b. Information taken from official OPM records.

[FR Doc. 99–33588 Filed 12–28–99; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42264; File No. SR–PHLX–99–38]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Relating to the Removal of Certain Printers From the Equity Floor

December 21, 1999.

I. Introduction

On September 10, 1999, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''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 relating to the removal of certain printers from the floor of the Exchange, the revision of the Exchange's minor rule plan, and the modification of Advice E–5 to conform to Phlx Rule 206. On October 22, 1999, the Exchange submitted Amendment No. 1 to its proposed rule change.[3] The proposed rule change and Amendment No. 1 were published in the **Federal Register** on November 24, 1999.[4] No comments were received on the proposal. On December 20, 1999, the Exchange submitted Amendment No. 2 to its proposed rule change.[5] This notice and order approves the proposed rule change, as amended, and solicits comments from interested persons on Amendment No. 2.

II. Description of the Proposal

The Phlx proposes to amend Equity Floor Procedure Advice E–5 (''Advice E–5''), Clocked Tickets; Phlx Rule 206, Written Orders-Day Orders; and Phlx Rule 216, Records to be Kept. The purpose of the amendments to Advice E–5 and Phlx Rules 206 and 216 is to allow for the removal of the Designated Automatic Routing to Terminal System (''DARTS'') printers from the equity floor without causing the specialists and floor brokers to be in violation of Advice E–5 or Phlx Rules 206 and 216.[6]

Currently, orders sent to the equity floor through the PACE System [7] generate a hard copy ticket, which is printed on a DARTS printer.[8] These tickets provide hard copy records of the time of receipt of orders. In addition, specialists stamp the time of execution of the order on the reverse side of the ticket on all manual market and limit orders. However, the system that supports the DARTS printers is not, and cannot become, Year 2000 compliant. Therefore, the DARTS printers will be removed from the Equity Floor. The information that is produced by the DARTS printer will be maintained electronically for the appropriate time periods mandated by the books and records requirements of the Commission. The Exchange has submitted a letter to the Commission undertaking, in part, to maintain and preserve, on behalf of the equity specialist firms, all information contained on the order tickets generated by the DARTS printer.[9]

Advice E–5 requires floor brokers to record, by time stamp, the time of receipt of the order on the front of the ticket and the time of execution of the order on the reverse side of the ticket. Specialists also are required to record the time of execution of orders executed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Cynthia Hoekstra, Counsel, Phlx, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, dated October 21, 1999 (''Amendment No. 1'').

[4] Securities Exchange Act Release No. 42151 (November 17, 1999), 64 FR 66223 (November 24, 1999).

[5] In Amendment No. 2, the Exchange requested accelerated approval of its proposed rule change and notified the Division that the Exchange will be submitting an undertaking concerning the record-keeping requirements of its equity specialists affected by the removal of the DARTS printers. *See* Letter from John Dayton, Counsel, Phlx, to Nancy Sanow, Senior Special Counsel, Division, Commission, dated December 17, 1999 (''Amendment No. 2''). A copy of the undertaking letter was received on December 20, 1999. *See* Letter from Lanny Schwartz, Executive Vice President, Legal, Phlx, to Michael A. Macchiaroli, Associate Director, Office of Risk Management and Control, Division, Commission, dated December 20, 1999 (''Schwartz Letter'').

[6] This proposal affects PACE order tickets only, not telephone orders/manual tickets or production of hard copy reports.

[7] PACE is the Exchange's automated order routing and execution system on the equity trading floor.

[8] PACE orders are also processed electronically. The Exchange believes, therefore, that the elimination of hard copy tickets will not impact the ability to efficiently process orders and executions. In fact, the Exchange believes that the removal of the hard copy tickets will improve trade processing efficiencies and reduce the amount of paper that is used on the trading floor. *See* Amendment No. 2, *supra* note 5.

[9] *See* Schwartz Letter, *supra* note 5.

off the specialist's book. In addition, Phlx Rule 206 requires, in part, that all orders given to a specialist be in writing and timed by him when received. Phlx Rule 216 requires, in part, that every specialist keep a record of all orders placed with him and all executions or such orders. In addition, Phlx Rule 216 requires the specialist to preserve such records in accordance with Rule 17a–4 of the Act.[10]

With no hard copy tickets recording order receipt and execution time data, floor brokers and specialists on the Equity Floor could be in violation of Advice E–5 and Rule 206 each time an order is received and executed on PACE. Without the DARTS printer tickets, specialists would be in violation of Rule 216 if they did not retain the DARTS printer tickets. Therefore, as a matter of practicality, it is necessary to eliminate the hard copy recording and document maintenance requirements for trades for which no hard copy ticket is generated. As stated above, the information that is produced by the DARTS printer will be maintained electronically for the appropriate time periods mandated by the books and records requirements of the Commission.

In addition, the proposed change to Advice E–5 would require specialists to record the time of receipt of hand-held orders to be placed on the specialist's book on the front of the ticket in accordance with Phlx Rule 206. Further, the fine schedule for violations of Advice E–5, which has not been updated for ten years, will be increased to better reflect the seriousness of the violation. The fine schedule for violations of Advice E–5 will be increased from $50 to $100 for the first occurrence, from $100 to $250 for the second occurrence, and from $200 to $500 for the third occurrence.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[12] requirements that the rules of an exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds that the removal of the DARTS printers is necessary since the printers cannot become Year 2000 compliant. The Commission notes that all PACE orders are currently processed electronically, and, further, that the Exchange has represented that the removal of the DARTS printers should not impact the processing of orders or executions and may, in fact, improve trade processing efficiencies and reduce paper on the trading floor. The Commission also notes that the Exchange has submitted a letter to the Commission undertaking to maintain and preserve electronically, on behalf of the equity specialist firms, all information contained on the order tickets generated by the DARTS printer.[13] The Exchange also agreed, in part, to promptly surrender such records at the request of the equity specialist firm, as well as allow the Commission to examine such records.[14] The Commission therefore, believes that it is appropriate to modify the Phlx's rules so that Phlx floor brokers and specialists will not violate Advice E–5 and Phlx Rules 206 and 216 once the printers are removed.

The Commission also finds it is appropriate to revise Advice E–5 to specifically require specialists to record the time of receipt of hand-held orders to be placed on the specialist's book on the front of the ticket, because it merely incorporates the existing requirement of Phlx Rule 206. Thus, the proposed revision to Advice E–5 clarifies the obligations of specialists. Further, the Commission believes it is appropriate to update the fine schedule for violations of Advice E–5 to better reflect the seriousnesss of such violations. The Commission notes that the Exchange has represented that the fine schedule has not been revised for ten years.

The Commission finds good cause for approving proposed Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register.** The Exchange is merely asking for expedited approval of its proposal to ensue a smooth transition from the DARTS printers to an electronic system before the Year 2000. The Exchange believes that accelerated approval will allow ample time for equity floor members to adjust to this change.[15] Thus, the Commission believes that allowing the removal of the DARTS printers and the revision of the corresponding Phlx Rules 206 and 216 and Advice E–5 prior to the Year 2000 will allow the Exchange to address Your 2000 associated issues in an expedited manner. In addition, the Commission notes that the revision to Advice E–5, which would require specialists to record the time of receipt of hand-held orders to be placed on the specialists book on the front of the ticket, merely clarifies the requirement of Phlx Rule 206 in Advice E–5. The Commission also believes it is appropriate to revise the find scheldue in Advice E–5 in conjunction with the other amendments to Advice E–5.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether Amendment No. 2, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. 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 in Washington, DC. Copies of such filing will also be available for inspection and copying at the principle office Exchange. All submission should refer to File No. SR–Phlx–99–38 and should be submitted by January 19, 2000.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[16] that the proposed rule change SR–PHLX–99–38), as amended, is approved.

For the Commission, by the Division of Market Requlation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 99–33850 Filed 12–28–99; 8:45 am]

BILLING CODE 8010–01–M

[10] 17 CFR 240.17a–4.

[11] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] *See* Schwartz Letter, *supra* note 5.

[14] *Id.*

[15] To assist members with the transition, the Exchange intends to provide refresher training sessions relating to the equity specialist workstations. *See* Amendment No. 2, *supra* note 5.

[16] 15 U.S.C. 78s(b)(2).

[17] CFR 200.30–3(A)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42263; File No. SR–Phlx–99–47]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Exemption of Certain Foreign Currency Options Participants From the Foreign Currency Options Participation Fee

December 21, 1999.

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 November 16, 1999, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described as described in Items I, II, and III below, which Items have been prepared by Exchange.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to exempt the foreign currency option (''FCO'') participants who had contracted to sell their FCO participations as of July 30, 1999 from payment of the FCO participation fee.

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 Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places species in Item IV below. The Exchange 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 Summary Basis for the Proposed Rule Change

1. Purpose

On June 23, 1999, the Exchange submitted a proposed rule change to the Commission, to adopt an annual FCO participation fee for all FCO participants.[3] The proposed rule change became immediately effective when it was fully filed.[4]The Exchange stated that it would bill this fee semi-annually, effective July 1, 1999, and that it would be payable beginning with FCO participants who held legal title as of July 30, 1999.

The Exchange notified all FCO participants about the fee on June 25, 1999. In its notification, the Exchange stated that the FCO participation fee would not apply to FCO participants who were not legal title holders as of July 30, 1999.

The Exchange, pursuant to its By-laws,[5] must provide notice to the membership at least fourteen days prior to the effective transfer of legal title to an FCO participation. Within two weeks prior to July 30, 1999, 46 FCO participants contracted to sell their FCO participants. The fourteen-day notice period of these 4 sales extended beyond July 30, 1999, and subjected those 46 FCO participants to the new FCO participation fee.

On October 20, 1999, the Exchange's Finance Committee discussed this situation, clarifying that the intent of the FCO participation fee was to capture only FCO participants who had contracted to sell their participation as of July 30, 1999.[6] Accordingly, the Exchange will exempt FCO participants who had contracted to sell their participations by that date from payment of the participation fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[7] in general, and further the objectives of Section 6(b)(4)[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the exemption distributes the burden of the fee equitably because those who would qualify for the exemption have sold their FCO participation and will not benefit from any improvements implemented with funds from the fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee or charged imposed by the Exchange and, therefore, has become effective upon filing pursuant to Rule (19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(2) thereunder.[10] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rate 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 purpose 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.[11] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41780 (August 23, 1999), 64 FR 47887 (September 1, 1999) (SR–Phlx–99–20).

[4] The Commission deemed the proposed rule change to be filed on July 21, 1999, the date of the last amendment, due to the substantive nature of the amendments.

[5] *See* Phlx By-law Article I, Section 1–1(i); Phlx By-Law Article XV, Section 15–1.

[6] The Exchange purchased 41 out of the 46 FCO participants. The Exchange represents that the purchaser of the remaining FCO participations will pay a pro rata portion of the participation fee, calculated from the date the purchaser assumes legal title to the FCO participations, as provided by Phlx By-law Article XIV, Section 14–7. Telephone conservation between John Dayton, Counsel, Phlx, and Murrary Ross, Vice President and Secretary, Phlx, and Hong-anh Tran, Attorney, and Joshua Kans, Special Counsel, Division of Market Regulation (''Division''), Commission, on November 24, 1999.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–99–47 and should be submitted by January 19, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33851 Filed 12–28–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 01/71–0372]

Zero Stage Capital VI, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Zero Stage Capital VI, L.P., 101 Main Street, Cambridge, MA 02142, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the proposed financing of a small concern is seeking an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730 (1998)). An exemption may not be granted by SBA until Notices of this transaction have been published. Zero Stage Capital VI, L.P., proposes to provide equity financing Mosaic Technology, Inc., 1106 Commonwealth Ave., Boston, MA 02215. The financing is contemplated for funding growth.

The financing is brought within the purview of section 107.730(a)(1) of the Regulations because Zero Stage Capital V, L.P., an Associate of Zero Stage Capital VI, L.P., owns greater than 10 percent of Mosaic Technology, Inc. and therefore Mosaic Technology, Inc. is considered an Associate of Zero Stage Capital VI, L.P. as defined in section 107.50 of the Regulations.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

A copy of this Notice shall be published, in accordance with section 107.730(g), in the Boston Herald, Boston, Massachusetts.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: December 22, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–33846 Filed 12–28–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Transpac Capital Corporation

[License No. 02/02–5502]

Notice of Surrender of License

Notice is hereby given that Transpac Capital Corporation, 1037 Route 46 East, Clifton, New Jersey 07013 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). TLC Funding Corporation was licensed by the Small Business Administration on May 28, 1987.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the License was accepted on November 29, 1999.

Accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 22, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–33845 Filed 12–28–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice #3186]

Secretary of State's Arms Control and Nonproliferation Advisory Board; Notice of Closed Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app 2 § 10(a)(2)(1996), the Secretary of State announces the following Arms Control and Nonproliferation Advisory Board (ACNAB) meetings:

Date and Location

January 6–7, 2000, Department of State, Washington, DC.
February 18, 2000, Patrick Air Force Base, FL, Cocoa Beach, FL.
March 24–25, 2000, Department of State, Washington, DC.
April 8–9, 2000, Livermore National Laboratory, Livermore, CA.

Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app 2 § 10(d)(1996), and in accordance with Executive Order 12958, in the interest of national defense and foreign policy, it has been determined that these Board meetings will be closed to the public, since the ACNAB members will be reviewing and discussing classified matters.

The purpose of this Advisory Board is to advise the President and the Secretary of State on scientific, technical, and policy matters affecting arms control. The board will review specific arms control and nonproliferation issues. Members will be briefed on current U.S. policy and issues regarding negotiations such as the Convention on Conventional Weapons and the Chemical and Biological Weapons Convention.

For more information, please contact Robert Sherman, Executive Director, Arms Control and Nonproliferation Advisory Board, at (202) 647–1192.

Dated: December 21, 1999.

Robert Sherman,

Executive Director, Secretary of State's Arms Control and Nonproliferation Advisory Board, Department of State.

[FR Doc. 99–33847 Filed 12–28–99; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Public Notice 3191]

Universal Postal Union Reform Initiatives; Notice of Briefing

AGENCY: Department of State.

ACTION: Notice of briefing.

The Department of State will host a briefing on Tuesday, February 1, 2000, to provide an update on reform initiatives at the Universal Postal Union (UPU).

The briefing will be held from 2 p.m. until approximately 4 p.m., on February 1, 2000, in Room 1105 of the Department of State, 2201 C Street, NW, Washington, DC. The briefing will be open to the public up to the capacity of the meeting room.

The briefing will provide information on the results of the recent meetings of the High-Level Group on the Future of the UPU, and of the UPU Postal Operations Council, as well as on other significant UPU—related issues. The briefing will be chaired by Ambassador E. Michael Southwick of the Department of State.

Entry to the Department of State building is controlled and will be facilitated by advance arrangements. In

[12] 17 CFR 200.30–3(a)(12).

order to arrange admittance, persons desiring to attend the briefing should, no later than noon on February 1, 2000, notify the Office of Technical and Specialized Agencies, Bureau of International Organization Affairs, Department of State, preferably by fax, providing the name of the meeting and the individual's name, Social Security number, date of birth, professional affiliation, address and telephone number. The fax number to use is (202) 647–8902. Voice telephone is (202) 647–2752. This request applies to both government and non-government individuals.

All attendees must use the Department of State diplomatic entrance at 22nd and C Streets, NW. One of the following means of identification will be required for admittance: any U.S. driver's license with photo, a passport, or any U.S. Government agency identification card.

Questions concerning the briefing may be directed to Mr. Neil Boyer at (202) 647–1044.

Dated: December 22, 1999.

Lynne Lambert,

Director, Office of Technical and Specialized Agencies, Bureau of International Organization Affairs, Department of State.

[FR Doc. 99–33848 Filed 12–28–99; 8:45 am]

BILLING CODE 4710–19–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending December 17, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–6645.
Date Filed: December 14, 1999.
Parties: Members of the International Air Transport Association.
Subject: PTC3 0398 dated 14 December 1999, Mail Vote 052—Resolution 076ee, TC3 PEX Fares from Japan to South East Asia, Intended effective date: 1 April 2000.

Docket Number: OST–99–6653.
Date Filed: December 15, 1999.
Parties: Members of the International Air Transport Association.
Subject: PTC23 EUR–J/K 0051 dated 14 December 1999, Mail Vote 053—TC23/TC123 between Europe and Japan, Resolutions 074f and 081zz, Intended effective date: 1 April 2000.

Docket Number: OST–99–6670.
Date Filed: December 16, 1999.
Parties: Members of the International Air Transport Association.
Subject: PTC COMP 0550 dated 17 December 1999, Mail Vote 054—Resolution 011a (Amending), Mileage Manual Non-TC Member/Non-IATA, Carrier Sectors, Intended effective date: 15 Jan 2000, for implementation 1 April 2000.

Docket Number: OST–99–6677.
Date Filed: December 17, 1999.
Parties: Members of the International Air Transport Association.
Subject: PAC/Reso/407 dated December 6, 1999 r1–r15, Special PAC Conference—Finally Adopted Resolutions, PAC/Meet/163 dated December 6, 1999—Minutes, Intended effective date: 1 January 2000.

Docket Number: OST–99–6682.
Date Filed: December 17, 1999.
Parties: Members of the International Air Transport Association.
Subject: PTC COMP 0552 dated 21 December 1999, Mail Vote 055—TC23/TC123 Special Passenger, Amending Resolution 010t, Intended effective date: 1 April 2000.

Andrea M. Jenkins,

Federal Register Liaison.

[FR Doc. 99–33787 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ending December 17, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–99–6663.
Date Filed: December 15, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: January 12, 2000.
Description: Application of United Parcel Service Co. (''UPS'') pursuant to 49 U.S.C. 41102 and Subpart Q, applies for a Certificate of Public Convenience and Necessity so as to authorize it to engage in the scheduled foreign air transportation of property and mail between Austin, Texas and Monterrey, Mexico. UPS further requests route integration authority enabling it to integrate services on other routes under the various certificate and exemption authorities held by UPS.

Docket Number: OST–99–6671.
Date Filed: December 16, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: January 13, 2000.
Description: Application of American Trans Air, Inc. (''ATA''), requests renewal of its Certificate of Public Convenience and Necessity to perform scheduled foreign air transportation of persons, property and mail between the terminal points Indianapolis, Indiana and Cancun, Mexico.

Docket Number: OST–99–6678.
Date Filed: December 17, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: January 14, 2000.
Description: Application of Helijet Airways Inc. (''Helijet'') pursuant to 49 U.S.C. 41301 *et seq.* and Subpart Q, applies for a Foreign Air Carrier Permit to engage in scheduled foreign air transportation of persons, property and mail between any point or points in Canada and any point or points in the United States. Helijet also requests authority to conduct Third, Fourth and, subject to the Department's approval, Fifth Freedom charter flights transporting persons and property in accordance with Part 212 of the Department's economic regulations and other applicable rules and regulations.

Andrea M. Jenkins,

Federal Register Liaison.

[FR Doc. 99–33786 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–6635]

Great Lakes Pilotage Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; request for comments.

SUMMARY: The Coast Guard's Office of Great Lakes Pilotage is holding a public meeting to discuss options for improving the safety, reliability, and efficiency of the Great Lakes Pilotage System. We encourage interested parties

to attend the meeting and submit comments for discussion during the meeting. We also seek written comments from any party who is unable to attend the meeting.

DATES: *Public Meeting:* We will hold the meeting on January 27, 2000, from 10 a.m. to 4 p.m. We may end the meeting early, if we have covered all the topics on the agenda and if the meeting attendees have no further comments. Written Comments: The Docket Management Facility must receive your comments on or before January 15, 2000.

ADDRESSES: Public Meeting: We will hold the meeting in room B1, The Federal Building, 1240 East 9th Street, Cleveland, Ohio 44199.

Written Comments: Look in the first column of the table to select one of the four methods to send your comments. Then, use the address or fax number in the second column to submit your comments:

If you are using this method	please use this address or fax number
(1) By mail	Docket Management Facility, (USCG–1999–6635), U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.
(2) In Person	Room PL–401. On the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. *Hours:* 9 a.m. to 5 p.m., Monday through Friday. Closed on Federal holidays. *Telephone number:* 202–366–9329.
(3) Internet	*http://dms.dot.gov.*
(4) Fax	Docket Management Facility: 202–493–2251.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice or the public meeting, contact Mr. Tom Lawler, Chief Economist, Office of Great Lakes Pilotage (G-MW), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20590, telephone 202–267–6164. For questions on viewing or submitting material to the docket contact Ms. Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

How Do I Participate in this Action?

The Coast Guard encourages you to participate by submitting comments and related material, and by attending the public meeting. If you submit written comments, please include—

- Your name and address;
- The docket number for this notice (USCG–1999–6635);
- The specific section of this notice to which each comment applies; and
- The reason for each comment.

You may mail, deliver, fax, or electronically submit your comments and attachments to the Docket Management Facility, using an address or fax number listed in the **ADDRESSES** section of this notice. Please do not submit the same comment or attachment by more than one method. If you mail or deliver your comments, they must be on 8½ by 11 inch paper and the quality of the copy should be clear enough for copying and scanning. If you mail your comments, and you would like to know if the Docket Management Facility received them, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

How Can I Get Additional Information, Including Copies of This Notice or Other Related Documents?

The Docket Management Facility maintains the public docket for this notice. The docket number for this notice is USCG–1999–6635. Comments, and other documents related to this notice will become part of this docket and will be available for inspection or copying as follows:

- *In person:* You may access the docket in room PL–401, on the Plaza Level of the Nassif Building at the same address, between 9 a.m. and 5 p.m., Monday through Friday. The facility is closed on Federal holidays.
- *Electronically:* You may access the docket on the Internet at *http://dms.dot.gov.*

Where Can I Get Information on Service for Individuals with Disabilities?

To obtain information on facilities or services for individuals with disabilities or to request that we provide special assistance at the public meeting, please contact Mr. Tom Lawler as soon as possible. You will find his address and phone number in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Why is the Coast Guard Holding This Public Meeting?

This meeting is in response to requests for a comprehensive review to improve the safety, reliability, and efficiency of the Great Lakes pilotage system. The requests came from all facets of the marine industry operating on the Great Lakes. We are holding the meeting to discuss ways to design a safer, more reliable and efficient pilotage system for the Great Lakes.

What Issues Should I Discuss at the Meeting or Address in Written Comments?

The public meeting on January 27, 2000, will provide a forum for members of the public to discuss ways to improve the safety, reliability and efficiency of the Great Lakes Pilotage System. You can discuss or comment on any ideas you have for improving the safety, reliability, and efficiency of the Great Lakes pilotage system.

What Is the Agenda for the Public Meeting?

Agenda

The agenda for the meeting on January 27, 2000, is as follows:

- Session I—Introduction and Overview.
- Session II—Discussion Groups. Each group will be chaired by a senior member of the Coast Guard. Each group will discuss one of the following topics:
  - ►Safety.
  - ►Efficiency.
  - ►Reliability.
- Session III—Reports, Recommendations, and Comments. The chairperson for each discussion group will report on their group's activities and recommendations.

Dated: December 14, 1999.

R.C. North,

Rear Admiral, Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–33472 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 188; Minimum Aviation System Performance Standards for High Frequency Data Link

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 188 meeting to be held January 14, 2000, starting at 9 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will include: (1) Review revised draft document, Minimum Operational Performance Standards for Aeronautical Mobile High Frequency Data Link. (SC–188 will conduct a final editorial review at this plenary meeting before approving the document to be forwarded to the Program Management Committee.); (2) Review summary of previous meeting; (3) Review Working Group Reports; (4) Review activities of other Standards Groups; (5) Open discussion; (6) Confirm dates for future meetings; (7) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 933–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on December 17, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–33799 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Program Management Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Program Management Committee meeting to be held January 11, 2000, starting at 9 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Welcome and Introductions; (2) Review/Approve Summary of previous meeting; (3) Publication Consideration/Approval: A. Final Draft, Guiding Principles for Air Traffic Services Provided Via Data Communications Utilizing the ATN, Builds I and IA (RTCA Paper No. 318–99/PMC–070, prepared by SC–194); B. Final Draft, U.S. National Airspace System (NAS) Plan for Air Traffic Service Data Link (Phase 1, En Route CONUS Implementation) (RTCA Paper No. 319–99/PMC–071, prepared by SC–194); C. Final Draft, Minimum Operational Performance Standards (MOPS) for Automated Meteorological Transmission (AUTOMET) (RTCA Paper No. 309–99/PMC–066, prepared by SC–195); D. Final Draft, Minimum Operational Performance Standards for GPS Local Area Augmentation System (LAAS) Airborne Equipment (RTCA Paper No. 320–99/PMC–072, prepared by SC–159); E. Final Draft, Revised DO–246, GNSS Based Precision Approach Local Area Augmentation System (LAAS) Signal-in-Space Interface Control Document (ICD), prepared by SC–159. The revised document would be published as RTCA DO–246A; F. Final Draft, Change 1, DOD–228, Minimum Operational Performance Standards for Global Navigation/Satellite System (GNSS) Airborne Antenna Equipment (RTCA Paper No. 322–99/PMC–074, prepared by SC–159); (4) Action Item Review: A. Action Item 99–12, Coordination of Special Committee work in support of Safe Flight 21, including Status of coordination; and Proposed TOR revision for SC–195; (5) Discussion; A. Update on SC–147, Working Group-1 activities. B. Review Document Production and PMC Meeting Schedule; (6) Other Business; (7) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 17, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–33800 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Jacksonville International Airport, Jacksonville, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Jacksonville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 28, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John Clark, Vice President of Aviation of the Jacksonville Port Authority at the following address: Jacksonville Port Authority, Post Office Box 3005, Jacksonville, Florida 32206–0005.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Jacksonville Port Authority under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Richard M. Owen, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024, 407–812–6331, Extension 19. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Jacksonville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulation (14 CFR Part 158).

On December 16, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Jacksonville Port Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 8, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–05–C–00–JAX.

Level of the proposed PFC: $3.00.

Proposed charge effective date: March 1, 2000.

Proposed charge expiration date: March 1, 2002.

Total estimated PFC revenue: $13,936,065.

Brief description of proposed project(s): Land Acquisition Parcel No. 1; JIA Master Plan and ALP Update; Land Acquisition Parcel Nos. 2, 3, 4, 5, and 7.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxi/commercial operators (ATCC) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Jacksonville Port Authority.

Issued in Orlando, Florida on December 21, 1999.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 99–33791 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Transportation Equity Act for the 21st Century (TEA–21); Final Implementation Guidance for Transportation Enhancement Activities

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of availability of final guidance.

SUMMARY: This document provides notice of the availability of final implementation guidance on the transportation enhancements (TE) provisions of the Federal-aid program administered by the FHWA. This guidance provides information and assistance to the States and local agencies in the delivery of the TE program, and includes amendments made by the Transportation Equity Act for the 21st Century (TEA–21).

FOR FURTHER INFORMATION CONTACT: Mr. Harold Peaks, Community Impacts and Transportation Enhancements Team Leader, HEPH, (202) 366–1598; or Mr. S. Reid Alsop, Office of the Chief Counsel, HCC–31, (202) 366–1371, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

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

Availability of Final Guidance

A copy of the final TE guidance may be obtained by calling (202) 366–0106 or may be viewed at the FHWA's web page as follows: *http://www.fhwa.dot.gov/environment/te*__final.htm

Background

On June 9, 1998, President Clinton signed into law the TEA–21, Public Law 105–178, 112 Stat. 107. The legislation includes improvements and changes to the TE program administered by the FHWA.

The interim guidance on TE was issued on June 17, 1999. To obtain a copy of this guidance, please contact the FHWA, Office of Human Environment, at 202–366–0106. We have not received many substantive comments on the interim guidance. However, a number of general comments were obtained through participants' discussions at the National Transportation Enhancements Coordinators meeting, held in Pittsburgh on June 22–23, 1999. The comments include topics such as user fees, linkage to scenic or historic sites, value of donations, local match, and military transport. The comments received are reflected in the questions and answers developed and made a part of the final TE guidance. The list of questions and answers assist in clarifying specific sections where issues have been brought to the attention of the FHWA. These questions and answers are among the more common questions raised by enhancement coordinators, project proponents, and interest groups. The expectation is that the list of questions and answers will remain fluid, and additional questions and answers will be added to the list as appropriate.

The final guidance, issued on December 17, 1999, supersedes two guidance memorandums issued by the FHWA: ''Transportation Enhancement Activities,'' dated April 24, 1992, and ''Eligibility of Historic Preservation Work for Transportation Enhancement Funding,'' dated June 6, 1995.

The final guidance does not attempt to address all the possible questions that have been or could be raised concerning transportation enhancements. The guidance, however, provides further information concerning the process of determining whether or not activities qualify for TE set-aside funds.

Much of this final guidance focuses particularly on the provisions related to TE activities added or amended by the TEA–21. It also provides brief summaries of relevant information detailed in other related guidance memoranda. It does not seek to replace these memoranda where they remain current and the information valid.

Among the key changes reflected in this final implementation guidance are the following:

1. Congress provided that TE activities must ''relate to surface transportation.'' This makes clear that TE projects are to have a relationship to surface transportation;
2. New categories of TE activities added by the TEA–21 are discussed; and
3. Innovative financing opportunities are provided by the TEA–21 and their program implications are discussed.

The TEA–21 continued the provision in 23 U.S.C. 133(d)(2) requiring 10 percent of the Surface Transportation Program (STP) funds be set-aside and be available only for TE activities. The specific language reads:

(2) For transportation enhancement activities.—10 percent of the funds apportioned to a State under section 104(b)(3) for a fiscal year shall only be available for transportation enhancement activities.

Section 1201 of the TEA–21 amends 23 U.S.C. 101(a)(35) which defines TE activities. Also, the TEA–21 amends 23 U.S.C. 134(h) and 23 U.S.C. 135(f); but continues to specify in 23 U.S.C. 135(f)(2)(G) that the statewide transportation improvement program shall reflect the priorities for programming and expenditure of funds, including transportation enhancements. This document provides guidance concerning the interpretation of the TE provisions and their implementation.

The list of qualifying TE activities provided in 23 U.S.C. 101(a)(35) of the TEA–21 is intended to be exclusive, not illustrative. That is, *only* those activities listed therein are eligible as TE activities. They are listed below (*Items listed in italics are those added by TEA–21*):

TE Activities Defined—

1. Provision of facilities for pedestrians and bicycles.
2. *Provision of safety and educational activities for pedestrians and bicyclists.*
3. Acquisition of scenic easements and scenic or historic sites.
4. Scenic or historic highway programs (*including the provision of tourist and welcome center facilities*).
5. Landscaping and other scenic beautification.
6. Historic preservation.
7. Rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals).
8. Preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian or bicycle trails).
9. Control and removal of outdoor advertising.
10. Archaeological planning and research.
11. *Environmental* mitigation to address water pollution due to highway runoff *or reduce vehicle-caused wildlife mortality while maintaining habitat connectivity.*
12. *Establishment of transportation museums.*

Many projects are a mix of elements, some on the list and some not. Only those project elements which are on the list may be counted as TE activities. For example, a rest area might include a historic site purchased and developed as an interpretive site illustrating local history. The historic site purchase and development could qualify as a transportation enhancement activity.

Activities which are not explicitly on the list may qualify if they are an integral part of a larger qualifying activity. For example, if the rehabilitation of a historic railroad station required the construction of new drainage facilities, the entire project could be considered for TE funding. Similarly, environmental analysis, project planning, design, land acquisition, and construction enhancement activities are eligible for funding.

The funded activities must be accessible to the general public or targeted to a broad segment of the general public.

Authority: 23 U.S.C. 315; and 49 CFR 1.48.

Issued on: December 22, 1999.

Kenneth R. Wykle,
Federal Highway Administrator.

[FR Doc. 99–33807 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Programmatic Environmental Impact Statement for the Maglev Deployment Program

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

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

SUMMARY: FRA is issuing this notice to advise the public that FRA will prepare a programmatic environmental impact statement (PEIS) for the Maglev Deployment Program, to solicit public and agency input into the development of the scope of that PEIS, and to advise the public that outreach activities conducted by the program participants will be considered in the preparation of the PEIS.

FOR FURTHER INFORMATION CONTACT: For further information regarding the programmatic environmental review, please contact: David Valenstein, Environmental Program Manager, Office of Passenger Programs, Federal Railroad Administration (RDV 10), 400 Seventh Street, SW (Mail Stop 20), Washington, D.C. 20590, (telephone 202 493–6368). For information regarding the Maglev Deployment Program, please contact: Arnold Kupferman, Maglev Program Manager, Office of Railroad Development, Federal Railroad Administration (RDV–2), 400 Seventh Street, SW (Mail Stop 20), Washington, D.C. 20590, (telephone 202 493–6370). For further information regarding any of the individual projects, please contact the applicant representatives identified below under the Alternative Sites heading.

SUPPLEMENTARY INFORMATION:

Background

Section 1218 of the Transportation Equity Act for the 21st Century (TEA 21) added section 322 to title 23 of the United States Code. Section 322 provides a total of $55 million for Fiscal Years 1999 through 2001 for transportation systems employing magnetic levitation (''Maglev'') and an authorization of appropriations for an additional $950 million over Fiscal Years 2000 through 2003. Responsibility for implementing the program has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. Section 322 requires FRA to establish project selection criteria, to solicit applications for funding, to select one or more projects to receive financial assistance for preconstruction planning activities, and, after completion of such activities, to provide financial assistance for final design, engineering, and construction activities leading to the implementation of a maglev deployment project.

FRA has determined that implementing the maglev deployment program is a major Federal action with the potential to significantly impact the human environment. As a consequence, FRA is initiating the preparation of an EIS as required under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and the regulations of the President's Council on Environmental Quality implementing NEPA (40 CFR 1500 *et seq.*). FRA intends to prepare a programmatic EIS (PEIS) to address the selection process and the potential for significant environmental impact from the maglev deployment program. The agency will prepare additional site specific environmental reviews, as appropriate, as the program progresses.

The Environmental Review Process

As provided for in 23 U.S.C. 322, FRA has initiated a competition to select a project for the purpose of demonstrating the use of maglev technology to the American public. Using criteria specified in section 322, FRA has selected seven projects, sponsored by States or their designated agencies, to receive preconstruction planning grants. As a part of the preconstruction planning effort, FRA has required the seven applicants to prepare environmental assessments and conduct public involvement and scoping activities for their respective project proposals. FRA will use these individual project environmental assessments and records of agency and public comment and participation in preparing the PEIS, which will be made available to the public for comment. FRA anticipates issuing a draft EIS in the summer of 2000. After reviewing comments on the draft PEIS, FRA will prepare a final PEIS that addresses these comments and incorporates any additional analyses and material deemed necessary. The final PEIS will be made available for public review for not less than 30 days before FRA takes any final action on the program.

Alternatives Sites

The following applicants and projects (with identified applicant representatives) were selected by the Secretary to receive preconstruction planning assistance and represent the range of potential program alternatives:

- Port Authority of Allegheny County: A 45-mile project linking Pittsburgh Airport to Pittsburgh and its eastern suburbs (Mr. Bruce W. Ahern, Port Authority of Allegheny County, 2235 Beaver Avenue, Pittsburgh, PA 15233–1080, telephone 412–237–6121).
- Maryland Department of Transportation: A 40-mile project linking Camden Yard in Baltimore and Baltimore-Washington International Airport to Union Station in Washington, D.C. (Mr. Suhair Alkhatib, Maryland Mass Transit Administration, William Donald Schafer Tower, 6 St. Paul St., Baltimore, MD 21202–1614, telephone 410–767–3751).
- California-Nevada Super Speed Train Commission: A 42-mile project linking Las Vegas to Primm, Nevada (Ms. Richann Johnson, Executive Assistant, California-Nevada Super Speed Train Commission, 400 Las Vegas Blvd. South, Las Vegas, NV 89101, telephone 702–229–6551).
- Florida Department of Transportation: A 20-mile project linking Port Canaveral to the Space Center and the Titusville Regional Airport (Mr. Nazih K. Haddad, Manager, Intercity Passenger Rail, Florida Department of Transportation, 605 Suwannee Street, Mail Station 57, Tallahassee, FL 32399–0450, telephone 850–414–4534).
- Greater New Orleans Expressway Commission: A 40-mile project linking New Orleans Union Passenger Terminal to the airport and across Lake Ponchartrain to the northern suburbs (Mr. Bryan Clement, Greater New Orleans Expressway Commission, 3943 N. Causeway Blvd., Metairie, LA 70002, telephone 504–835–3116).
- Georgia/Atlanta Regional Commission: First 40 miles of 110-mile project from Atlanta to Chattanooga, TN. (Mr. Robert McCord, Maglev Project Manager, The Atlanta Regional Commission, 40 Courtland Street, NE, Atlanta, GA 30303, telephone 404–463–3253).
- State of California: A 70-to 75-mile system connecting Los Angeles International Airport to Union Station in downtown Los Angeles to Ontario Airport and further east into Riverside County (Mr. Albert Perdon, Maglev Project Director, Albert Perdon & Associates, 12748 Castleford Lane, Cerritos, CA 90703, telephone 310–871–1113).

Scoping and Comments

FRA encourages broad participation in the EIS process during scoping and review of the resulting environmental documents. Comments and suggestions are invited from all interested agencies and the public at large to insure the full range of issues related to the proposed action and all reasonable alternatives are addressed and all significant issues are identified. In particular, FRA is interested in determining whether there are areas of national environmental concern where there might be the potential for significant impacts, either adverse or favorable, as a result of advancing the maglev deployment program. Because the applicants are required to conduct public outreach as part of their preparation of environmental assessments, FRA does not plan to hold public scoping meetings. The applicants are responsible for contacting appropriate Federal, State, and local agencies, private organizations and citizens to solicit input regarding their respective program alternatives. Persons interested in providing comments on the scope of the programmatic environmental document should do so by February 18, 2000. Comments can be sent in writing to Mr. David Valenstein at the address identified above. Persons interested in providing comments on issues of environmental concern with respect to any of the individual projects should contact the applicant representatives identified above.

FRA has in place a Maglev Deployment Program page (*http://www.fra.dot.gov/o/hsgt/maglev.htm*) on the agency's Internet site where the public can obtain additional information related to the Maglev Deployment Program. FRA also intends to establish a separate page on the agency's site specifically addressing the environmental impact statement process for the Maglev Deployment Program.

Issued in Washington, D.C. on: December 20, 1999.

Arrigo P. Mongini,

Acting Associate Administrator for Railroad Development.

[FR Doc. 99–33788 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6668]

Notice of Receipt of Petition for Decision That Nonconforming 1991 Mercedes-Benz 560SEC Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1991 Mercedes-Benz 560SEC passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that the 1991 Mercedes-Benz 560SEC that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 28, 2000.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Black Shrine, Inc. of Costa Mesa, California (''Black Shrine'') (Registered Importer 99–224) has petitioned NHTSA to decide whether 1991 Mercedes-Benz 560SEC passenger cars are eligible for importation into the United States. The vehicle which Black Shrine believes is substantially similar is the 1991 Mercedes-Benz 560SEC that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Daimler Benz, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1991 Mercedes-Benz 560SEC passenger car to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Black Shrine submitted information with its petition intended to demonstrate that the non-U.S. certified 1991 Mercedes-Benz 560SEC, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1991 Mercedes-Benz 560SEC is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a high-mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* inscription of the required warning statement on the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt latch in the driver's position; (b) installation of an ignition switch-actuated seat belt warning buzzer. The petitioner states that the vehicle is equipped with driver's and passenger's side air bags and knee bolsters that are identical to the components found on the vehicle's U.S.-certified counterpart. Additionally, the petitioner states that the vehicle is equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, and with combination lap and shoulder restraints that release by means of a single push button at both rear designated seating positions.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

The petitioner states that a theft prevention/certification label will be permanently affixed to the vehicle and the vehicle's vehicle identification number (VIN) will be engraved on the engine, transmission, right front fender, left front fender, hood, right door, left door, front bumper, rear bumper, right rear quarter panel, left rear quarter panel, and decklid to comply with the Theft Prevention Standard found at 49 CFR Part 541.

The petitioner also states that a VIN plate must be installed inside the vehicle so that it can be read from the left windshield pillar and a VIN reference label must be affixed to the edge of the door or on the latchpost nearest the driver to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 23, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–33802 Filed 12–28–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20958]

Academy Lines, Inc.—Merger—Asbury Park Transit Lines, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving Finance Transaction.

SUMMARY: Academy Lines, Inc. (Academy Lines or applicant), a motor carrier of passengers, has filed an application under 49 U.S.C. 14303 for the acquisition by merger of its affiliate, Asbury Park Transit Lines, Inc. (Asbury Park), also a motor carrier of passengers. Persons wishing to oppose the application must follow the rules at 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by February 14, 2000. Applicant may file a reply by February 28, 2000. If no comments are filed by February 14, 2000, the approval is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC-F–20958 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, send one copy of comments to applicant's representative: Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, N.W., Washington, DC 20005–3934.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Academy Lines is authorized to provide local commuter bus service and other regular-route operations, principally between New York, NY, and various points in New Jersey and Pennsylvania, as well as in special or charter operations, pursuant to authority granted in Docket No. MC–106207. Asbury Park is authorized to provide local commuter bus service and other regular-route operations, principally between New York, NY, and various points in New Jersey, as well as special or charter operations, pursuant to authority granted in Docket No. MC–1002.

Academy Lines and Asbury Park are currently controlled by the Frank Tedesco Trust, Francis Tedesco and Mark Tedesco, settlers (Tedesco Trust). Applicant states that the Tedesco Trust will convey all of its shares of stock of Asbury Park to Academy Lines, and Asbury Park will be merged into Academy Lines.[1] By application thereafter to be filed with the Federal Highway Administration, the operating authority held by Asbury Park is expected to be transferred to, and be integrated into the operating authority of, Academy Lines.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

Applicant has submitted the information required by 49 CFR 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b). Specifically, applicant has shown that the merger will have a positive effect on the adequacy of transportation to the public and will result in no increase in fixed charges and no changes in employment. *See* 49 CFR 1182.2(a)(7). Additional information may be obtained from applicant's representative.

On the basis of the application, we find that the proposed merger is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed merger is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed vacated.

3. This decision will be effective on February 14, 2000, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Office of Motor Carrier Safety—HMCE–20, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, S.W., Washington, DC 20590.

Decided: December 21, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–33630 Filed 12–28–99; 8:45 am]

BILLING CODE 4915–00–P

[1] By separate application simultaneously filed in *Tedesco Family ESB Trust— Acquisition of Control—Academy Bus Tours, Inc., et al.*, STB Docket No. MC-F–20957, Tedesco Family ESB Trust (Francis Tedesco and Mark Tedesco, settlers), seeks Board approval of its acquisition of control, from Tedesco Trust, of Academy Lines, along with Academy Bus Tours, Inc. (MC–165004), and, through Franmar Logistics, Inc., a noncarrier, of Academy Bus Tours, Inc. (PA) (MC–215354), Academy Express, Inc. (MC–228481), Commuter Bus Line, Inc. (MC–162133), and No. 22 Hillside Corp. (MC–182453).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20957]

Tedesco Family ESB Trust—Acquisition of Control—Academy Bus Tours, Inc., et al.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance transaction.

SUMMARY: Tedesco Family ESB Trust, Francis Tedesco and Mark Tedesco, settlers, of Hoboken, NJ (Tedesco Family Trust or applicant), a noncarrier, has filed an application under 49 U.S.C. 14303 to acquire control of Academy Bus Tours, Inc., and Academy Lines, Inc.,[1] motor carriers of passengers, and through Franmar Logistics, Inc., of Hoboken, NJ, a noncarrier, of Academy Bus Tours, Inc. (PA) (MC–215354), Academy Express, Inc. (MC–228481), Commuter Bus Line, Inc. (MC–162133), and No. 22 Hillside Corp. (MC–182453), motor carriers of passengers. Persons wishing to oppose the application must follow the rules at 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by February 14, 2000. Applicants may file a reply by February 28, 2000. If no comments are filed by February 14, 2000, the approval is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20957 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, send one copy of comments to applicant's representative: Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, NW, Washington, DC 20005–3934.

[1] By separate application simultaneously filed in *Academy Lines, Inc.—Merger— Asbury Park Transit Lines, Inc.*, STB Docket No. MC–F–20958, Board approval is being sought for the merger of Asbury Park Transit Lines, Inc. (MC–1002), into Academy Lines, Inc. (MC–106207).

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Tedesco Family Trust seeks authority to acquire control of six motor passenger carriers through the acquisition of all of their shares of voting stock. All six passenger carriers hold federally issued operating authority and provide either local commuter bus service and other regular-route operations, or special or charter operations, or a combination of both. Collectively, these carriers operate between New York, NY, and various points in New Jersey and Pennsylvania.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) The total fixed charges that result; and (3) The interest of affected carrier employees.

Applicant has submitted the information required by 49 CFR 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b). Specifically, applicant has shown that the common control of the six bus lines will have a positive effect on the adequacy of transportation to the public and will result in no increase in fixed charges and no changes in employment. *See* 49 CFR 1182.2(a)(7). Additional information may be obtained from applicant's representative.

On the basis of the application, we find that the proposed acquisition of control is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisition of control is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed vacated.

3. This decision will be effective on February 14, 2000, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Office of Motor Carrier Safety—HMCE–20, 400 Virginia Avenue, SW, Suite 600, Washington, DC 20024; (2) The U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW, Washington, DC 20530; and (3) The U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW, Washington, DC 20590.

Decided: December 21, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–33631 Filed 12–28–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Bahrain
Iraq
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen
Republic of

Dated: December 21, 1999.

Philip West,

International Tax Counsel (Tax Policy).

[FR Doc. 99–33783 Filed 12–28–99; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Customs Service

Modification of National Customs Automation Program Test Regarding Reconciliation

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: On February 6, 1998, a general notice was published in the **Federal Register** announcing the Customs Automated Commercial System (ACS) Reconciliation Prototype test. Additional notices announcing modifications to the prototype were published on August 18, 1998, and July 21, 1999. This notice serves to make further modifications, as well as to announce operational aspects of the prototype not covered in the previous notices. These changes include, among other things, making the filing of NAFTA Reconciliations optional and announcing a liquidated damages process for late-filed and non-filed Reconciliations. Other aspects of the prototype test not affected by the changes announced in this notice remain the same.

DATES: The prototype testing period started on October 1, 1998. It will run for approximately two years from that date and may be extended. Applications to participate in the prototype will be accepted throughout the duration of the prototype. The liquidated damages provision and the change regarding optional filing of NAFTA Reconciliations set forth in this notice are effective on the date this document is published in the **Federal Register**.

ADDRESS: Written inquiries regarding participation in the prototype test should be addressed to Ms. Shari McCann, Reconciliation Team, U.S. Customs Service, 1300 Pennsylvania Ave. N.W., Mailstop 5.2A, Washington, DC, 20229–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Don Luther at (202) 927–0915 or Ms. Shari McCann at (202) 927–1106.

SUPPLEMENTARY INFORMATION:

I. Administrative Procedure

Reconciliation, a planned component of the National Customs Automation Program (NCAP), as provided for in Title VI (Subtitle B) of the North American Free Trade Agreement Implementation Act (the NAFTA Implementation Act; Pub. L. 103–182, 107 State. 2057 (December 8, 1993)), is currently being tested by Customs under the Customs Automated Commercial System (ACS) Prototype test. Customs announced and explained the prototype test (also referred to as the prototype or the test) in a general notice document published in the **Federal Register** (63 FR 6257) on February 6, 1998, which replaced all previous notices. A notice published in the **Federal Register** (63 FR 44303) on August 18, 1998, announced clarifications and operational changes. Further changes to the prototype were announced in a **Federal Register** (64 FR 39187) notice published on July 21, 1999. This notice announces additional changes. Except for the modifications herein specified, all other aspects of the test remain the same.

II. Background

Reconciliation is the process that allows an importer, at the time of entry summary, to identify undeterminable information (other than that affecting admissibility) to Customs and to provide that outstanding information at a later date. The means of providing that outstanding information at a later date is through the filing of a Reconciliation entry.

An importer indicates its intent to file a Reconciliation entry by ''flagging'' an entry summary and indicating which undeterminable issues will be covered and resolved in the Reconciliation. (The flagging is done electronically at the time of filing the entry summary. See the notice published in the **Federal Register** on August 18, 1998, for the two methods of flagging entry summaries: individual entry flag and blanket flag.) Later, the importer files the Reconciliation entry that resolves only the issues that were specified as undeterminable in the flagged entry summary. The issues that may be covered for later resolution in a Reconciliation are: (1) Value; (2) classification, on a limited basis; (3) value aspects of entries filed under heading 9802, Harmonized Tariff Schedule of the United States (HTSUS) (referred to as 9802 issues); and (4) merchandise entered under the North American Free Trade Agreement (NAFTA).

III. Filing of NAFTA Reconciliations Optional

A. Existing Requirements

As set forth in the **Federal Register** notice published on February 6, 1998, the flagging of an entry summary creates an obligation on the part of the importer to file a Reconciliation to resolve and close out the issue(s) specified. Reconciliations covering a NAFTA eligibility issue, which cannot include other issues, are due within 12 months of the earliest import date of all entry summaries grouped on the Reconciliation. Reconciliations covering any of the other issues (alone or in combination) are due within 15 months of the earliest summary date of the entry summaries grouped on the Reconciliation.

B. Policy Discussion

The value, classification, and 9802 issues allowed under Reconciliation have a direct bearing on Customs ability to regulate the importation of merchandise and enforce the customs laws. For this reason, Customs will continue to require timely closure of these issues via timely filed Reconciliations and will issue liquidated damages claims against the importer in cases where this obligation is not met.

The function of NAFTA Reconciliations is to allow the importer to make a post-importation claim of NAFTA eligibility under 19 U.S.C. 1520(d), which requires the filing of a claim thereunder within one year of importation. If a NAFTA Reconciliation is not filed within the 12 months allowed under the prototype, it simply means that no post-importation NAFTA claim can be filed timely under the statute, as the one-year time limit provided under 19 U.S.C. 1520(d) will have expired.

Thus, the only consequence of a failure to file a NAFTA Reconciliation is the importer's loss of the benefit provided under the statute. By eliminating the formality of closing open NAFTA flags (entry summaries flagged to indicate the intended filing of a NAFTA Reconciliation) where no claims under 19 U.S.C. 1520(d) are being made, Customs hopes to further streamline the prototype and prevent unnecessary work by Customs personnel and the trade community.

C. Change in Requirement

Based on the foregoing policy considerations, upon publication of this notice, the filing of NAFTA Reconciliations (as opposed to Reconciliations covering other issues) will be optional. As before, importers wishing to make post-importation NAFTA claims under the Reconciliation process must do so via a timely filed NAFTA Reconciliation. However, as announced in this notice, NAFTA Reconciliations that are filed against flagged entry summaries past their 12-month deadline will simply not be accepted by Customs and liquidated damages claims will not be issued. Late-filed NAFTA Reconciliations may be refiled (electronically retransmitted) after removal of all entry summaries for which the deadline has passed, and NAFTA claims may be made against those entry summaries that were still within the 12-month deadline at the time of original Reconciliation filing.

D. Effect on Drawback

As mentioned in the previous **Federal Register** notices, drawback claims may not be made against flagged entry summaries (open flags) until all issues have been closed by a Reconciliation. This restriction was built into Customs automated system to ensure proper financial controls under drawback. Thus, when a Reconciliation is not filed, the entry summary remains flagged and drawback is precluded.

Customs plans eventually to implement a mechanism to delete open NAFTA flags that are more than 12 months old (flagged entry summaries as to which the intended NAFTA Reconciliation was not filed). This will serve to enable drawback on those entry summaries flagged for NAFTA reconciliation that were not reconciled within the required 12 months. (Flagged entry summaries covering other issues will remain flagged until a Reconciliation is filed.)

The flag deletion capability for entry summaries flagged for NAFTA reconciliation will not be ready until spring, 2000. Until its implementation, drawback claims will not be accepted where NAFTA Reconciliations were not filed for flagged entry summaries. Customs will notify filers when the flag deletion capability has been implemented. Reconciliations for NAFTA may still be filed timely, either with or without NAFTA claims being made, which will enable drawback on the entry summaries without delay.

IV. Definition of Reconciliation Filing Date

As described in the previous **Federal Register** notices, the Reconciliation entry comprises three components: the Header, the Association File, and the Summarized Line Item Data Spreadsheet. In order for a Reconciliation entry to be considered filed, all three of these components must be received by the Customs processing port assigned to the importer. Additionally, for NAFTA Reconciliations where NAFTA claims are being made, the statements specified in 19 CFR 181.32 are required. Accordingly, the actual filing date for each Reconciliation is the date when all of these required elements have been properly presented to Customs. This actual filing date will be used for determining whether Reconciliations were filed timely.

V. Liquidated Damages for Failure To File Reconciliations Timely

As described in this notice (subsection (C) of Section I), the filing of NAFTA Reconciliations is now optional. Accordingly, the liquidated damages provisions in this section apply only to value, classification, and 9802 Reconciliations. They do not apply to NAFTA Reconciliations.

A. Requirements

As described above and in the **Federal Register** notice of February 6, 1998, the flagging of an entry summary creates an obligation on the part of the importer to file a Reconciliation within the allotted time, covering the flagged issue(s) on that entry summary. This notice removes the obligation to reconcile NAFTA eligibility for entry summaries flagged for that issue.

Each entry summary flagged for value, classification, and/or 9802 issues must be covered by a Reconciliation filed prior to the due date, 15 months from the earliest entry summary date of the underlying entry summaries. Up to 9,999 underlying entry summaries may be covered by a single Reconciliation. If any one of the underlying entry summaries' due dates has passed prior to Reconciliation filing, the entire Reconciliation is considered late. However, the importer and filer have discretion to determine which and how many entry summaries are grouped on a Reconciliation, regardless of the flagging method and timing involved in the original flagging of those entry summaries.

B. Liquidated Damages for Non-Filed and Late-Filed Reconciliations

The obligation to file Reconciliations created by the flagging of entry summaries carries liquidated damages implications for failure to do so timely. Each flagged entry summary remains an independent entity until reconciled. Customs has no way of knowing which entry summaries will be covered by a single Reconciliation until one is actually filed. Once the Reconciliation has been filed, the universe of entry summaries covered by it is established. Moreover, the Reconciliation is an entry in its own right and has the same legal status as other Customs entries. For these reasons, late-filing and non-filing of Reconciliations will be dealt with using different mechanisms.

C. Liquidated Damages Mechanisms

1. ''No File'' Liquidated Damages

Periodically, Customs will perform research to identify flagged entries that were not reconciled timely (within 15 months of their date). In cases where flagged entry summaries are found to have not been covered by a Reconciliation, Customs will issue a single ''No File'' liquidated damages claim against the importer of record for all unreconciled flagged entries past their due dates for the calendar month. Subsequent filing of Reconciliations to cover entries on this monthly consolidated liquidated damages report will result in mitigation of the initial liquidated damages claim.

2. ''Late File'' Liquidated Damages

In cases where flagged entry summaries are found to have been covered by a Reconciliation that was filed late, Customs will issue a single ''Late File'' liquidated damages claim against the Reconciliation entry itself (as opposed to a claim against the importer that covers the calendar month, as in the case of ''No File'' liquidated damages claims). This mechanism applies also to Reconciliations, filed timely or not, where payment of additional monies (duties, taxes, fees, and interest) due is made late or not at all.

3. Where Liquidated Damages Claims Are Processed

Each importer participating in the ACS Reconciliation Prototype is assigned to a particular Reconciliation processing port. Liquidated damages claims involving Reconciliation will always be processed by the Reconciliation processing port. This is true regardless of the port(s) where the underlying entry summaries were filed.

D. Summary of Liquidated Damages Claims

There are five different types of liquidated damages violations under the ACS Reconciliation Prototype. The descriptions, assessed liquidated damages amounts, and ''option 1'' amounts are shown below. ''Option 1'' refers to the option where importers may agree to pay a reduced amount, but waive rights to mitigate the claim below that amount. The term ''money'' in this listing refers to the additional duties, taxes, fees, and interest due upon Reconciliation.

1. Reconciliation No File

Description: Entry summaries flagged, but no Reconciliation filed. Customs will issue a single consolidated liquidated damages claim for all such instances for a given importer, per month, per surety. (For example, if an importer had flagged entry summaries covered by two sureties during one month, two separate consolidated liquidated damages claims would be issued, one covering entry summaries insured by one surety and the other covering entry summaries insured by the second surety.)

Assessed Liquidated Damages Amount: Total entered value of the underlying entry(ies).

Option 1 Amount: Not Applicable.

2. Reconciliation Money No File

Description: Reconciliation filed timely, but without payment of additional duties, taxes, fees, and interest due.

Assessed Amount: $1,000 or double the duties, taxes, and fees due on the Reconciliation, whichever is greater.

Option 1 Amount: Not Applicable.

3. Reconciliation Late File

Description: Reconciliation filed and paid after the 15-month deadline.

Assessed Amount: $1,000 or double the duties, taxes, fees, and interest, if applicable, due on the Reconciliation, whichever is greater.

Option 1 Amount: $500+(Total duties, taxes, fees, and interest, if applicable, due on Reconciliation×number of days late×0.1%).

4. Reconciliation Money Late File

Description: Reconciliation filed timely, but payment of additional duties, taxes, fees, and interest due submitted late.

Assessed Amount: $1,000 or double the duties, taxes, fees, and interest due on the Reconciliation, whichever is greater.

Option 1 Amount: $500+(Total duties, taxes, fees, and interest due on Reconciliation×number of days payment is late×0.1%).

5. Reconciliation Late File with Money No File

Description: Reconciliation filed late, without payment of duties, taxes, fees, and interest due.

Assessed Amount: $1,000 or double the duties, taxes, and fees due on the Reconciliation, whichever is greater.

Option 1 Amount: Not Applicable.

E. Surety Issues

The liquidated damages claims that result from failure to file Reconciliations or filing them untimely may be for substantial amounts. Failure to resolve these claims could saturate the importer's continuous bond. Thus, in certain circumstances, importers may be required to submit single entry bonds for further entry summaries or make live entry with payment to secure release of merchandise.

VI. Courtesy Notification of Impending Due Dates

Because of the serious consequences involved in not filing Reconciliations timely, Customs has been providing importers with lists of their flagged entry summaries upon request. However, workload considerations make this practice unsustainable. While the tracking and timely reconciliation of flagged entry summaries is solely the responsibility of the importer and filer, Customs appreciates the logistical burden of this task. For this reason, Customs is currently developing an Internet-based lookup system, where interested filers and importers can obtain the list of flagged entry summaries that are coming due in the upcoming months (referring to the Reconciliation filing due date (or deadline)). This system will provide entry summary numbers sorted two ways: by filer code and by an encrypted version of the importer of record number, which will be made available to the importer.

Importers who prefer that their entry numbers and flag codes not be made available via this mechanism may opt out by sending written notification to that effect to the Reconciliation Team at the address shown in the ADDRESS section of this notice. Such written notifications must be received by January 31, 2000.

It is anticipated that this lookup system will be operational in spring, 2000. In the interim, the Reconciliation team will continue to provide filers with monthly lists of flagged entries coming due during the following month. Importers and filers retain the right to request data from Customs under the authority of the Freedom of Information Act (FOIA), for which monetary charges may be assessed.

VII. Conclusion

Regarding the ACS Reconciliation Prototype test generally, interested parties should consult the **Federal Register** notices of February 6, 1998 (63 FR 6257), August 18, 1998 (63 FR 44303), and July 21, 1999 (64 FR 39187). All terms and conditions set forth in those notices remain in effect, except as specifically modified or affected by this notice.

Dated: December 23, 1999.

Charles W. Winwood,

Assistant Commissioner, Office of Field Operations.

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federal register

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December 29, 1999

Part II

Department of Commerce

International Trade Administration

Final Determination of Sales at Less Than Fair Value and Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate Products From India et al.; Notices

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–817]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products From India

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

ACTION: Notice.

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Timothy Finn or Nithya Nagarajan, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0065 or (202) 482–5253, respectively.

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''). In addition, unless otherwise indicated, all references are made to the Department's regulations at 19 CFR Part 351 (1999).

Final Determination

We determine that certain cut-to-length carbon-quality steel plate products (''CTL plate'') from India are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''*Suspension of Liquidation*'' section of this notice.

Case History

Since the preliminary determination in this investigation (*Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from India,* 64 FR 41202 (July 29, 1999)) (''*Preliminary Determination*''), the following events have occurred:

In August, 1999, the Department issued two additional supplemental questionnaires to Steel Authority of India, Ltd.(''SAIL''), in response to which the respondent filed submissions on August 17, 1999. In September 1999, the Department conducted verification of SAIL, the sole respondent in the instant investigation. A public version of our report of the results of this verification is on file in the Central Records Unit (''CRU''), room B–099, of the main Department of Commerce building, under the appropriate case number. On November 18, 1999, a public hearing was held at the main Department of Commerce building and was attended by interested parties.

Scope of Investigation

The products covered by the scope of this investigation are certain hot-rolled carbon-quality steel: (1) Universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (i.e., USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is January 1, 1998, through December 31, 1998.

Facts Available

Based on our analysis of the facts on the record of this investigation, we continue to find that SAIL failed to act to the best of its ability in reporting accurate and verifiable information to the Department. At the preliminary determination, we found that because of 1) the problems with the electronic databases that SAIL submitted; 2) the lateness and incompleteness of narrative portions of the questionnaire responses; and 3) the lack of product-specific costs, SAIL's questionnaire response could not be used to calculate a reliable margin. As a result, we utilized adverse facts available as the basis of the preliminary margin.

Section 776(a)(2) of the Act provides that ''if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

The Department has further determined that the use of facts available is appropriate for SAIL for purposes of the final determination, pursuant to section 776(a)(2)(A), (B), and (D) of the Act. With respect to subsection (A), at verification the Department discovered that SAIL failed to report a significant number of home market sales; was unable to verify the total quantity and value of home market sales; and failed to provide reliable cost or constructed value data for the products. *See Home Market and United States Sales Verification Report* (''*Sales Report*''), dated November 3, 1999; *see also Cost of Production and Constructed Value Verification Report* (''*Cost Report*''), dated November 3, 1999. With regard to subsection (B), SAIL was provided with numerous opportunities and extensions of time to fully respond to the Department's original and supplemental questionnaires, as well as ample time to prepare for verification. However, even with numerous opportunities to remedy problems, SAIL failed to provide reliable data to the Department in the form and manner requested.

With respect to section 776(a)(2)(D) of the Act., we note that as a result of the widespread problems encountered at verification, SAIL's questionnaire responses could not be verified. *See Sales Report* and *Cost Report. See Memorandum to the File: Determination of Verification Failure* (''*Verification Memo*''), dated December 13, 1999.

Section 782(d) provides certain conditions that must be satisfied before the Department may, subject to section 782(e), disregard all or part of the information submitted by a respondent. First, this section states that, if the Department determines that a response to a request for information does not comply with the request, it shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of the review. Section 782(d) continues that, if the party submits further information in response to the deficiency and the Department finds the response is still deficient or submitted beyond the applicable time limits, the Department may disregard all or part of the original and subsequent responses.

With respect to section 782(d), we gave SAIL numerous opportunities and extensions to submit complete and accurate data. As stated in the Preliminary Determination, SAIL's questionnaire and deficiency questionnaire responses were found to be substantially deficient and untimely for purposes of calculating an accurate antidumping margin. *See Preliminary Determination.* However, subsequent to the preliminary determination we issued two additional questionnaires and further extensions to SAIL presenting it yet additional opportunities to submit a complete and accurate electronic database. Nevertheless, the Department found at verification that the final submission was again substantially deficient (*see* the *Department's Position* below; *see Verification Memo*; *and see Sales Report* and *Cost Report*). Therefore the Department may ''disregard all or part of the original and subsequent responses,'' subject to subsection (e) of section 782.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed ''deficient'' under section 782(d) provided that:

> (1) The information is submitted by the deadline established for its submission,
>
> (2) The information can be verified,
>
> (3) The information is not so incomplete that it cannot be served as a reliable basis for reaching the applicable determination,
>
> (4) The interested party has demonstrated that it has acted to the best of its ability in providing the information and meeting the requirements established by the administering authority * * * with respect to the information, and
>
> (5) The information can be used without undue difficulties.

See Section 782(e) of the Act. In the instant investigation, record evidence supports the following findings:

First, with respect to section 782(e)(1), as stated in the Preliminary Determination and the sales and cost verification reports, SAIL was given numerous extensions to submit accurate data which it failed to do. In fact the last submission of cost data filed on August 18, 1999, was a database which contained unreadable electronic versions of SAIL's cost of production which did not include any constructed value information.

Second, with respect to section 782(e)(2), we were not able to verify SAIL's questionnaire response due to the fact that essential components of the response (*i.e.,* the home market and cost databases) contained significant errors.

Third, with respect to section 782(e)(3), the fact that essential components of SAIL's response could not be verified resulted in information that was incomplete and unreliable as a basis for determining the accurate margin of dumping.

Fourth, with respect to section 782(e)(4), SAIL, as stated in the home market sales verification report, did not sufficiently verify the accuracy and reliability of its own data prior to submitting the information to the Department, thereby indicating that it did not act to the best of its ability to provide accurate and reliable data to the Department.

Finally, with respect to section 782 (e)(5), the U.S. sales database contained errors that, while in isolation were susceptible to correction, however when combined with the other pervasive flaws in SAIL's data lead us to conclude that SAIL's data on the whole is unreliable. As a result, the Department does not have an adequate basis upon which to conduct its analysis to determine the dumping margin and must resort to facts available pursuant to section 776(a)(2) of the Act.

In selecting from among the facts otherwise 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 a request for information. *See* the Statement of Administrative Action (''SAA'') at 870. To examine whether the respondent ''cooperated'' by ''acting to the best of its ability'' under section 776(b), the Department considers, inter alia, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. *See e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review* (''*Pipes and Tubes from Thailand*''), 62 FR 53808, 53819–53820 (October 16, 1997).

In addition to repeated problems in the timeliness and completeness of submissions and the workability of computer tapes, verification revealed that SAIL's data was significantly inaccurate, incomplete or otherwise unreliable. Therefore, pursuant to 776(b) of the Act, we conclude that SAIL did not cooperate to the best of its ability during the course of this investigation and consequently we used an adverse inference in selecting a margin as facts available. The Department has applied a margin rate of 72.49 percent, the highest of the margins alleged in the petition, as facts available.

Corroboration

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on ''secondary information,'' such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No.103–316 (1994) (hereinafter, the ''SAA'') states that ''corroborate'' means to determine that the information used has probative value. See SAA at 870.

To corroborate the range of the margins alleged in the petition, we examined the basis of the rates contained in the petition. The petition margins were based on both price-to-price and price-to-constructed value comparisons. Petitioners' calculated export price was based on U.S. price offerings, with deductions taken for international movement charges. We compared this with information from U.S. Customs and found them consistent. Petitioners based normal value on prices for comparable products sold in the home market obtained from market research. Petitioners calculated constructed value based on their own production experience adjusted for known differences. With regard to the normal values contained in the petition, the Department is aware of no other independent sources of information that would enable us to further corroborate this information. We compared the petition information with reliable information obtained during the investigation, primarily SAIL's financial statements and other published materials from the questionnaire response and found them consistent. Finally, with respect to the relevance of the margin used for adverse facts available, the Department stated in *Tapered Roller Bearings from Japan; Final Results of Antidumping Duty Administrative Review,* 62 FR 47454 (September 9, 1997), that it will consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. *See also Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review,* 60 FR 49567 (September 26, 1995). We have determined that there is no evidence on the record that the selected margin is not appropriate. *See Memorandum to the File: Corroboration of the Petition Data,* dated July 19, 1999, on file in the CRU.

Finally, we note that the SAA at 870 specifically states that where ''corroboration may not be practicable in a given circumstance,'' the Department may nevertheless apply an adverse inference. The SAA at 869 emphasizes that the Department need not prove that the facts available are the best alternative information. Therefore, based on our efforts, described above, to corroborate information contained in the petition, and mindful of the legislative history discussing facts available and corroboration, we consider the petition margin we are assigning to SAIL in this investigation as adverse facts available to be corroborated to the extent practicable.

Interested Party Comments

Comment 1: Facts Available

Respondent argues that the Department should determine that SAIL cooperated to the best of its ability to accurately report its export sales to the U.S., and as a result the Department should not base its final determination on total adverse facts available.

SAIL argues that it responded in a timely manner to all of the Department's requests for information and also cooperated in the conduct of a 21-day verification to ensure the accuracy of its responses. SAIL admits that it had difficulties in verifying the accuracy of its home market sales, and cost of production data, but argues that its U.S. sales data were verified without significant problems and should be used as a basis for calculating the final antidumping duty margin in this determination. SAIL further argues that although it had difficulties in verifying the home market sales, the majority of these problematic sales would not have been used for comparison purposes as they were either of defective or off-grade merchandise or merchandise that would not be used for comparison purposes to the U.S. products. Accordingly, although SAIL's home market database lacks the degree of precision required by the Department, respondent argues that there is sufficient reliable information about the home market sales for the Department to evaluate and determine the ''true'' picture of SAIL's home market sales. Finally, while acknowledging that there were problems associated with its cost of production data, SAIL contends that the Department verified the underlying accuracy of SAIL's books and records and also verified the plant-specific average plate costs. Therefore, the Department has a reliable basis from which to determine the relevant costs of the products sold to the United States. SAIL argues that extrapolating information from this reliable information, the Department could determine that SAIL's margin would be in the range of zero to 1 percent. As a result, SAIL proposes that the Department compare the U.S. prices in the submitted Section C responses to the normal value and constructed value alleged in the petition, after comparing these figures to the home market prices from Section B responses, and cost of production data in the Section D responses to evaluate the reliability of the petition information.

In SAIL's view, the Department cannot ignore the U.S. sales information submitted and verified and resort to total adverse facts available. SAIL relies on the premise that the ''basic purpose of the statute'' is to determine a margin as accurately as possible citing *Rhone-Poulenc Inc,* v. *United States,* 899 F.2d 1185, 1191 (Fed. Cir. 1990). Furthermore, respondent argues that the Court of International Trade (''CIT'') has upheld the Department's use of best information available where the respondent's data was more accurate than the data in the petition and where the Department appeared to verify the data and make adjustments to it. *See Micron Technology, Inc.* v. *United States,* 893 F. Supp. 21, 35 (CIT 1995) (''*Micron*''). In the present determination, SAIL argues that the Department should not ignore SAIL's probative, accurate U.S. sales data and rely on less probative export information as facts available which would result in inaccurate dumping margins. SAIL repeats its claim that the Department has accurate and verified U.S. sales data; reliable home market sales data for the product most similar to the U.S. product; and average plant-specific costs sufficient to demonstrate that home market sales were not made below cost; and therefore, can make an accurate price comparison.

SAIL's secondary argument is that the URAA requires the use of its timely and verified information on the record of this investigation. SAIL argues that, pursuant to section 782(e) of the Act, the Department must consider information if: (1) the information has been submitted in a timely manner; (2) the information can be verified; (3) the information can serve as a reliable basis for reaching the applicable determination; (4) the interested party demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. *See* section 782(e) of the Act. Citing multiple prior Department determinations, SAIL argues that it has met all these criteria, therefore, the submitted U.S. sales data must be used to calculate the margin. (*See Toyota Motor Sales, U.S.A. Inc.* v. *United States,* 15 F. Supp. 2d 872 (CIT 1988); *Koenig & Bauer-Albert AG* v. *United States,* 15 F. Supp. 2d 834 (CIT 1998); *see also Stainless Steel Sheet and Strip in Coils from Mexico,* 64 FR 30790 (1999); *Certain Preserved Mushrooms from Chile,* 63 FR 56613 (1998)). SAIL argues that it would be arbitrary and capricious for the Department to reject SAIL's accurate U.S. sales data in favor of an adverse facts available margin from the petition and that the Department must use SAIL's U.S. data and partial facts available for the other missing data in calculating SAIL's final dumping margin on the basis that SAIL cooperated to the best of its ability during the instant investigation. Citing Annex II of the Agreement on Implementation of Article VI of the GATT 1994 (''AD Agreement''), SAIL contends that where a party acts to the best of its ability, its information should not be disregarded even though the information is not ideal in all respects.

Petitioners counter SAIL's arguments on the grounds that SAIL failed to act to the best of its ability. As support for their contention, petitioners cite to SAIL's omissions of both home market sales and cost data, and its selective compliance with the Department's instructions. Petitioners note that the Department attempted to accommodate SAIL in the course of the investigation and during verification; however, SAIL continued to fail to submit a full, readable, and complete database for use in the Department's investigation.

Furthermore, petitioners argue that SAIL understates the gravity of the errors in its database. Petitioners cite to numerous factual discrepancies in the home market sales and cost databases including: (i) inability to reconcile total quantity and value; (ii) under-reported sales values and over-reported quantities; (iii) omitted home market sales; (iv) double-counted transactions; (v) misreported gross unit prices, product characteristics, and taxes; (vi) misreported thickness and width values in the home market database; (vii) over and under-reported freight costs in the U.S. sales database; (viii) misreported product characteristics for U.S. sales; (ix) failure to provide a constructed value database; (x) problematic yield adjustments to reported costs; (xi) understated material costs; (xii) failure to provide a ratio analyses for the RSP plant; (xiii) failure to provide product-specific costs; (xiv) failure to report the conversion factor of theoretical to actual weights; and (xv) failure to explain the reason for transactions with an identical home market control number (''CONNUMH'') having different variable costs. As a result, petitioners argue that there was no reliable information on the record (as evidenced by the Department's verification reports) to enable the Department to calculate a margin. Petitioners cite *Pipes and Tubes from Thailand,* at 53814, in support of their contention that without reliable cost data there is no means of ensuring the accuracy and reliability of the home market sales data. In addition, petitioners also argue that the errors with the U.S. database (such as errors in reporting product characteristics of a majority of U.S. sales) render it deficient, incomplete, and inaccurate. As a result, the Department cannot calculate a margin and must resort to total adverse facts available.

Petitioners also contest SAIL's invocation of Annex II of the AD Agreement. According to petitioners, SAIL's information was considerably less than ideal. Petitioners cite to the problems, listed above, with the home market sales, cost, and U.S. sales databases to counter SAIL's argument regarding the reliability of its information. Petitioners argue that the calculation of a margin comparing SAIL's U.S. sales information to the normal value (''NV'') and constructed value (''CV'') from the petition would lead to an untenable result that would encourage selective reporting in the future and undermine the statutory goal of calculating an accurate margin. Moreover, petitioners state that the premise of SAIL's argument relies on the belief that the U.S. sales database is without errors, which is not factually supported by the Department's findings at verification. *See Sales Report.*

Finally, petitioners state that the standard set forth in section 782(e) of the Act does not support the use of U.S. sales information upon the rejection of home market sales and cost of production information. Petitioners state that section 782(e) does not direct the Department to use part of response where essential components of the response are not otherwise useable. *See Frozen Concentrated Orange Juice from Brazil,* 64 FR 43650 (August 11, 1999). As a result of the data problems described above, as well as SAIL's inadequate review of its database for accuracy and completeness, petitioners argue that respondent clearly failed to act to the best of its ability to provide the Department with requested information, and therefore use of total adverse facts available is warranted for SAIL.

Petitioners rely on two recent cases to demonstrate the Department's methodology for selecting total adverse facts available under circumstances similar to those in the present investigation. First, petitioners argue that the Department normally rejects a respondent's response in its entirety when price-to-price comparison is impossible due to a reporting failure on the behalf of the respondent. In *Heavy Forged Hand Tools Finished or Unfinished, With or Without Handles from the People's Republic of China* (''*Tools from China*''), 64 FR 43659 (August 11, 1999), the Department rejected the response and used total adverse facts available when it discovered, at verification, that a significant portion of sales were missing for four months of the POR and that it could not ''successfully perform the completeness test.'' *See Tools from China,* 64 FR at 43663. Second, petitioners argue that total adverse facts available is warranted where the questionnaire response is extremely deficient in other respects such that the Department cannot reliably use the reported data to calculate a margin. *See Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Germany* (''*Steel Wire Rod from Germany*''), 63 FR 8953 (February 23, 1998). In that case, the Department found that the response was deficient and an unreliable basis to calculate a margin as a result of ''numerous inconsistencies'' in the reported sales and cost data. Petitioners argue that the fact pattern of the present case is similar to both *Tools from China* and *Steel Wire Rod from Germany;* therefore, the Department's only choice is to apply total adverse facts available in determining the dumping margin for SAIL's transactions during the POI.

SAIL takes issue in the petitioners' claim that the facts here are similar to those in *Tools from China* and argues that petitioners' reliance on *Tools from China* is misplaced, since there was a determination in that case that the respondents were withholding information and generally acting in ''bad faith.'' Contrary to the circumstances in that case, SAIL argues that there is no evidence of ''bad faith'' on its part in the instant investigation.

Department Position:

We disagree with respondent that total adverse facts available are not warranted for this determination. SAIL has consistently failed to provide reliable information throughout the course of this investigation. At the preliminary determination we relied on facts available because widespread and repeated problems in SAIL's questionnaire response rendered it unuseable for purposes of calculating a margin. These problems recurred despite our numerous and clear indications to SAIL of its response deficiencies. Even though we rejected use of SAIL's questionnaire response at the preliminary determination, because the company was seemingly attempting to cooperate, albeit in a flawed manner, we continued to collect data after the preliminary determination in an attempt to gather a sufficiently reliable database and narrative record for verification and for use in the final determination. The Department also rejected petitioners' request that verification be cancelled in light of the response deficiencies. However, as evidenced by the summary below, SAIL was unable to provide the Department with useable information to calculate and determine whether sales were made at less than fair value.

Throughout the responses to the Department's original questionnaire and supplemental questionnaires there were ongoing, serious problems in the areas of completeness, timeliness, and workability of computer tapes. Regarding completeness, the responses repeatedly made the statement that certain data were not available and would be supplied later (*i.e.,* during verification). Instances of this unavailability included unreported home market sales, a substantial number of sales dates, product specifications, supporting documentation, and so forth.

Regarding timeliness, on several occasions SAIL called requesting extensions past the already extended deadlines for its submissions. On other occasions SAIL submitted unrequested clarifications to previous responses and responses to questions after the required deadline, in effect providing itself with an extension to respond to the Department's questionnaires. In fact, several of SAIL's submissions were returned to it due to untimely filing. *See* Letter to Respondent's Counsel on July 7, 1999, *Antidumping Duty Investigation of Certain Cut-to-Length Carbon Quality Steel Plate (''CTL Plate'') from India.*

Regarding computer tapes, repeated technical problems with the submitted data resulted in our inability to load, run, and analyze the data, despite a significant amount of time and attention from the Department. Moreover, at verification we discovered that SAIL's last submission (made just prior to verification and to provide the Department with useable cost of production and constructed value data) was not only incomplete, but also riddled with inaccuracies to the point where SAIL's data remains unuseable. SAIL attempted to provide the Department with a new tape at verification containing revised cost of production and constructed value data which the Department rejected as untimely.

Furthermore, at verification, we discovered that: SAIL had failed to report a significant number of home market sales; we were unable to verify the total quantity and value of home market sales; SAIL failed to report accurate gross unit prices; SAIL failed to reconcile costs of production to its audited financial statements; and SAIL failed to provide constructed value data on the costs of products produced and sold to the United States. *See Sales Report* and *Cost Report.*

Furthermore, we disagree with SAIL's characterization of its U.S. sales as accurate, timely, and verified. In fact, the U.S. sale database contained certain errors, as revealed at verification. *See Sales Report; see also Verification Memo.* Moreover, we disagree with SAIL that we are required by the Act to use SAIL's reported U.S. prices. SAIL cites to *Toyota Motor Sales, U.S.A., Inc.,* v. *United States,* 15 F. Supp. 2d 872 (CIT 1998); *Koenig & Bauer-Albert AG* v. *United States,* 15 F. Supp. 2d 834 (CIT 1998); *Antidumping Duty Investigation on Sales at Less-Than-Fair-Value: Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia,* 64 FR 40457 (July 19, 1999); *Antidumping Duty Investigation on Sales at Less-Than-Fair-Value: Stainless Steel Sheet and Strip in Coils from Mexico,* 64 FR 30790 (1999), as support for the contention that the Department does not resort to total facts available if there are deficiencies in the respondent's submitted information. It is the Department's long-standing practice to reject a respondent's questionnaire response *in toto* when essential components of the response are so riddled with errors and inaccuracies as to be unreliable. *See Steel Wire Rod from Germany.* SAIL's argument relies on a mischaracterization of our practice with respect to so-called ''gap-filler'' facts available. SAIL argues that the Department should fill in the record for home market sales, cost of production, and constructed value as if there were a mere ''gap'' in the response, as opposed to the entire record. Thus respondent's arguments and citations to these cases are inapposite. In each of the above-mentioned cases, the majority of the information on the record was verified and useable; there were only certain small areas of information which required the Department to facts otherwise available to accurately calculate a dumping margin. The Department's long-standing practice of filling in gaps or correcting inaccuracies in the information reported in a questionnaire response, often based on verification findings, is appropriate only in cases where the questionnaire response is otherwise substantially complete and useable. In contrast, in this case, SAIL's questionnaire response is substantially incomplete and unuseable in that there are deficiencies concerning a significant portion of the information required to calculate a dumping margin. To properly conduct an antidumping analysis which includes a sales-below-cost allegation, the Department must analyze four essential components of a respondent's data: U.S. sales; home market sales; cost of production for the home market models; and constructed value for the U.S. models. Yet SAIL has not provided a useable home market sales database, cost of production database, or constructed value database. Moreover, the U.S. sales database would require some revisions and corrections in order to be useable. As a result of the aggregate deficiencies (data problems and SAIL's responses), the Department was unable to adequately analyze SAIL's selling practices in a thorough manner for purposes of measuring the existence of sales at less than fair value for this final determination. *See Sales Report* and *Cost Report.*

We also disagree with SAIL's reliance on the *Micron* decision in arguing that we should use its U.S. sales data as facts available. In the *Micron* case, the CIT affirmed the Department's use of respondent data as non-adverse facts available for a discrete piece of data which required adjustment. Specifically, the Department had concluded that a respondent used an improper methodology in reporting depreciation expenses. In selecting non-adverse facts available in order to properly adjust the depreciation expenses, the Department relied on calculations proposed by the respondent, which were specific to the subject merchandise, rather than calculations proposed by petitioner, which were based on broader assets. Thus, the facts of the *Micron* case are quite different from this case, where the Department must apply total adverse facts available because SAIL's data on the whole is unreliable.

Respondent also cites to section 782(e) of the Act as support for its argument that the Department should utilize the verified U.S. sales in calculating a dumping margin in the instant investigation. Section 782(e) of the Act states that the Department shall not decline to consider information deemed ''deficient'' under section 782(d) provided that subsections (1), (2), (3), (4), and (5) of section 782(e) are met. In the instant investigation, record evidence supports the finding that SAIL did not meet these requirements (*see, Facts Available* section above).

With regard to each respective subsection of 782(e): (1) SAIL did not provide information in a timely manner; (2) the information submitted could not be verified; (3) essential components of the information (*e.g.,* home market sales and cost information) are so incomplete that it cannot be used as a reliable basis for reaching a determination; (4) SAIL did not act to the best of its ability in providing the information and meeting the requirements established by the administering authority; and (5) the information cannot be used without undue difficulties. Accordingly, we are applying a margin based on total facts available to SAIL in the final determination. *See, Facts Available* section above.

Accordingly, pursuant to section 776(a)(2) of the Act, the Department has determined that the information on the record is unusable and is not a reliable basis upon which to calculate a margin in this investigation. Moreover, because we determine that SAIL has not acted to the best of its ability, pursuant to 776(b) of the Act, we used an adverse inference in selecting a margin as facts available. The Department has applied a margin rate of 72.49 percent, the highest margin alleged in the petition, as facts available.

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 subject merchandise from India that were entered, or withdrawn from warehouse, for consumption on or after July 29, 1999 (the date of publication of the Department's preliminary determination) for SAIL. 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
SAIL	72.49
All others[1]	72.49

[1] The Act normally prohibits inclusion in the ''All Others'' rate of any margins determined entirely on the basis of facts available, pursuant to section 776. However, where the estimated weighted-average margin is based entirely on facts available, we must use any reasonable method to establish the estimated ''All Others'' rate for exporters and producers not individually investigated. *See* section 733(d)(1)(ii); 735(c)(5)(B). In this case, we have determined that a reasonable method is to use 72.49 percent, the highest margin alleged in the petition, which was also the source of our facts available margin for SAIL. This is consistent with the Department's practice. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Venezuela,* 63 FR 8946, 8948 (1998).

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our determination. Because our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the 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 issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33228 Filed 12–28–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–818]

Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From India

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

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Copyak or Eric B. Greynolds, Office of AD/CVD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202–482–2786.

Final Determination: The U.S. Department of Commerce (the Department) determines that countervailable subsidies are being provided to certain producers and exporters of certain cut-to-length carbon-quality steel plate from India. For information on the estimated countervailing duty rate, please see the ''Suspension of Liquidation'' section of this notice.

SUPPLEMENTARY INFORMATION:

Petitioners

The petition for this investigation was filed by Bethlehem Steel Corporation; U.S. Steel Group, a unit of USX Corporation; Gulf States Steel, Inc.; IPSCO Steel Inc.; Tuscaloosa Steel Corporation; and the United Steelworkers of America (the petitioners).

Case History

Since the publication of the *Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from India,* 64 FR 40438 (July 26, 1999) (*Preliminary Determination*), the following events have occurred. We issued a supplemental questionnaire on July 29, 1999, and we received a response to that supplemental questionnaire on August 6, 1999. From August 8 through August 20, 1999, we conducted a verification of the information submitted by the respondents. *See* Memoranda to David Mueller, Director, Office of AD/CVD Enforcement VI, dated September 20, 1999, ''Verification of the Questionnaire Responses of the Government of India (GOI)'' and ''Verification of the

Questionnaire Responses Submitted by the Steel Authority of India (SAIL)'' (GOI Verification Report and SAIL Verification Report, respectively), which are on file in public version form in our Central Records Unit (Room B–099 of the main Commerce building).

Petitioners, the GOI, and SAIL filed case briefs on September 29, 1999, and rebuttal briefs on October 4, 1999. On November 20, 1999, a public hearing was conducted.

Scope of Investigation

The products covered by this scope are certain hot-rolled carbon-quality steel: (1) universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils).

Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of this investigation unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (i.e., USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to this investigation is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930 (the Act), as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 C.F.R. part 351 (1998) and to the current substantive countervailing duty regulations published in the **Federal Register** on November 25, 1998, 63 FR 65348 (*CVD Regulations*).

Injury Test

Because India 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 India materially injure, or threaten material injury to, a U.S. industry. On April 5, 1999, the ITC announced its preliminary determination 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 India of the subject merchandise. *See Certain Cut-to-Length Carbon-Quality Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia,* 64 FR 17198 (April 8, 1999).

Alignment With Final Antidumping Duty Determination

On July 2, 1999, petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigation (*see Initiation of Antidumping Duty Investigations: Certain Cut-to-length Carbon-Quality Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, the Republic of Korea, and the Former Yugoslav Republic of Macedonia,* 64 FR 12959 (March 16, 1999)). In accordance with section 705(a)(1) of the Act, we aligned the final determination in this investigation with the final determinations in the antidumping duty investigations of cut-to-length plate. *See Preliminary Determination,* 64 FR 40438 (July 26, 1999). Because the final determination of this countervailing duty investigation was aligned with the final antidumping duty determination and the final antidumping duty determination was postponed, the Department extended the final determination of the countervailing duty investigation until no later than December 13, 1999. *See Postponement of Final Antidumping Duty Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate Products from France, India, Indonesia, Italy, Japan, and Korea; Postponement of Final Countervailing Duty Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate Products from France, India, Indonesia, Italy, and Korea: and Amendment of the Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Product from Indonesia,* 64 FR 46341, 46342, (August 25, 1999).

Period of Investigation (POI)

Because SAIL is the only exporter/producer of the subject merchandise, the POI for which we are measuring subsidies is the period for SAIL's most recently completed fiscal year, April 1, 1997 through March 31, 1998.

Subsidies Valuation Information

Allocation Period: Under section 351.524 of the CVD Regulations, non-recurring benefits are allocated over time, while recurring benefits are expensed in the year of receipt. Section 351.524(d)(2) of the *CVD Regulations* states that we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System and updated by the U.S. Department of Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation and establishes that the difference between the company-specific or country-wide AUL for the industry under investigation is significant. In this investigation, no party to the proceeding has claimed that the IRS tables do not reasonably reflect the AUL of the renewable physical assets for the firm or industry under investigation. Therefore, according to section 351.524(d)(2) of the *CVD Regulations,* we have allocated non-recurring benefits over 15 years, the AUL listed in the IRS tables for the steel industry.

Under section 351.524 of the *CVD Regulations,* non-recurring benefits which equal less than 0.5 percent of a company's relevant sales are expensed in the year of receipt. SAIL realized non-recurring benefits under a program during two separate years. In the first year, SAIL realized a non-recurring benefit which was less than 0.5 percent of the total value of its export sales during that year. We did not allocate that benefit but rather expensed it in the year it was realized. In the second year, which was the POI, SAIL realized a benefit under the same program which was greater than 0.5 percent of the total value of its export sales during that year. Therefore, we allocated that benefit over 15 years.

Benchmarks for Loans and Discount Rate: SAIL did not report long-term company-specific fixed rate loans denominated in rupees. Therefore, for programs requiring a discount rate or the application of a rupee-denominated long-term benchmark interest rate, we relied upon the long-term rupee-denominated ‘‘lending rates’’ of private creditors reported in the International Monetary Fund's *International Financial Statistics.*

SAIL also reported several long-term foreign currency loans obtained from commercial sources for use as a benchmark where necessary. However, we are unable to rely upon those loans for benchmark purposes because the agreement dates and currencies are not consistent with the agreement dates and currencies of the loans under investigation and because SAIL reported its payments in rupees and reported weighted-average interest rates derived from those payments. We attempted (both during and after verification) but were unable to obtain any information regarding long-term foreign currency lending rates for companies in India. Therefore, we have used the curreny-specific ‘‘Lending Rates’’ from private creditors as published in *International Financial Statistics* as the benchmark for foreign currency loans.

For those programs requiring the application of a short-term interest rate benchmark, we used for benchmark purposes company-specific, short-term commercial interest rates reported by SAIL in accordance with section 351.505(3)(i) of the *CVD Regulations.*

I. Programs Determined To Be Countervailable

A. Duty Entitlement Passbook Scheme (DEPS)

In its May 10, 1999, response to the Department's original questionnaire, the GOI submitted copies of two publically available Ministry of Commerce publications—’’Export and Import Policy’’ and ‘‘Handbook of Procedures’’ (*see* Exhibits P and Q of the public version on file in the Central Records Unit, Room B–099 of the main Commerce building). These publications set forth the rules and regulations for the several programs which allow duty exemptions on imports. Chapter 7 of the ‘‘Export and Import Policy’’ contains the details of India's Duty Exemption Scheme, which consists of the DEPS and ‘‘Duty Free Licenses’’ (Advance Licenses, Advance Intermediate Licenses, and Special Imprest Licenses).

On April 1, 1995, the GOI enacted the Passbook Scheme (PBS). Administered under auspices of the Directorate General of Foreign Trade (DGFT), the PBS enabled GOI-designated manufacturers/exporters, upon export of finished goods, to earn import duty exemptions in the form of credits which could be used to pay customs duties on subsequent imports. The amount of PBS credit granted was determined according to the GOI's ‘‘Standard Input/Output Norms Schedule’’ (SIO Norms), which contains GOI-determined breakdowns of inputs needed to produce finished products. Rather than receiving cash, companies record their PBS credits in ‘‘passbooks’’ and then offset import duties on subsequent GOI-approved imports by making debit entries in their passbooks.

The PBS was discontinued on April 1, 1997. However, exporters are allowed to use their PBS credits for up to three years and, thus, exporters could use PBS credits as late as March 31, 2000. We established at verification that SAIL did not earn or use PBS credits during the POI.

India's DEPS was enacted on April 1, 1997, as a successor to the PBS. As with PBS, the DEPS enables exporting companies to earn import duty exemptions in the form of passbook credits rather than cash. Exporting companies may obtain DEPS credits on a pre-export basis or on a post-export basis. Eligibility for pre-export DEPS credits is limited to manufacturer/exporters that have exported for a three-year period prior to applying for the program. The amount of pre-export DEPS credits that can be earned is capped at five percent of the average export performance of the applicant during the preceding three years. Pre-export DEPS credits are not transferable. At verification, we established that SAIL has not participated in the DEPS on a pre-export basis.

All exporters are eligible to earn DEPS credits on a post-export basis, provided that the exported product is listed in the GOI's SIO Norms. Post-export DEPS credits can be used for any subsequent imports, regardless of whether they are consumed in the production of an export product. Post-export DEPS credits are valid for 12 months and are transferable. With respect to subject merchandise, exporters are eligible to earn credits equal to 13 percent of the f.o.b. value of their export shipment. During the POI, SAIL earned post-export DEPS credits. SAIL used such credits during the POI, and did not transfer post-export DEPS credits during the POI.

Section 351.519 of the *CVD Regulations* sets forth the criteria regarding the remission, exemption or drawback of import duties. Under section 351.519(a)(4), the entire amount of an import duty exemption is countervailable if the government does not have in place and apply a system or procedure to confirm which imports are consumed in the production of the exported product and in what amounts, or if the government has not carried out an examination of actual imports involved to confirm which imports are consumed in the production of the exported product.

The DEPS does not meet either of these standards. Upon exportation, the exporter submits a listing of inputs used to produce the export shipment. While some of these inputs may be imported items, the GOI has no way of knowing whether the inputted items were imported or purchased domestically. Therefore, the GOI has no system in place for determining whether the value of credits issued is equal to the amount of import duties that was payable on any imported items which were consumed in the production of the export shipment. In addition, the GOI does not carry out, nor has it carried out, examinations of actual inputs involved. Consequently, under section 351.519 (a)(4) of the *CVD Regulations*, the entire amount of import duty exemption earned by SAIL during the POI constitutes a benefit. A financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided under the program because the GOI has provided SAIL with credits for the future payment of import duties. This program can only be used by exporters and therefore is specific under section 771(5)(A) of the Act. On this basis, we determine that the DEPS is a countervailable program.

In our *Preliminary Determination*, we calculated the total benefit to SAIL from the DEPS as the total amount of import duty exemptions claimed by SAIL during the POI, against the DEPS credits the company earned on its export shipments of subject merchandise to the United States. Upon further review of the operation of this program, in accordance with section 351.519(b)(2) of the *CVD Regulations*, we determine that benefits from the DEPS are conferred as of the date of exportation of the shipment for which the pertinent DEPS credits are earned rather than the date DEPS credits are used. At that time, the amount of the benefit is known by the exporter. The benefit to SAIL under this program is the total value of DEPS import duty exemptions that SAIL earned on its export shipments of subject merchandise to the United States during the POI. We also determine that the application fees paid by SAIL 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.

Under section 351.524(c) of the *CVD Regulations*, this program provides a recurring benefit because DEPS credits all for the exemption of import duties. To derive the DEPS program rate, we first calculated the value of the credits that SAIL earned for its export shipments of subject merchandise to the United States during the POI by multiplying the f.o.b. value of each export shipment by 13 percent, the percentage of DEPS credit allowed under the program for exports of subject merchandise. We then subtracted as an allowable offset the actual amount of application fees paid for each license in accordance with section 771(6) of the Act. Finally, we took this sum (the total value of the licenses net of application fees paid) and divided it by SAIL's total exports of subject merchandise to the United States during the POI.

On this basis, we determine the net countervailable subsidy from this program to be 7.28 percent *ad valorem. See, also*, Comment 3 and Comment 4 of the ''Interested Party Comments'' section.

B. Advance Licenses

Under India's Duty Exemption Scheme, companies may also import inputs duty-free through the use of import licenses. Using advance licenses, companies are able to import inputs ''required for the manufacture of goods'' without paying India's customs duties (*see* chapter 7 of ''Export and Import Policy''). Advance intermediate licenses and special imprest licenses are also used to import inputs duty-free. During the POI, SAIL used advance licences and also sold some advance licenses. SAIL did not use or sell any advance intermediate licenses or special imprest licenses during the POI.

The Department has previously determined that the sale of import licenses confers a countervailable export subsidy. *See, e.g., Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review*, 63 FR 64050 (Nov. 18, 1998) (*1996 Castings*) and *Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review*, 62 FR 32297 (June 13, 1997) (*1994 Castings*). No new or substantive evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this determination. During the POI, SAIL sold advance licenses or portions of advance licenses. Therefore, in accordance with section 771(5)(B) of the Act, we determine that SAIL's sale of advance licenses is an export subsidy and that the financial contribution in the form of the revenue received from the license sales constitutes the benefit to SAIL.

With respect to the use of advance licenses, the Department found, in *1994 Castings* (62 FR 32297 (June 13, 1997)), that the advance license system accomplished, in essence, what a drawback system is intended to accomplish, *i.e.*, finished products produced with imported inputs are allowed to be exported free of the import duties assessed on the imported inputs. The Department concluded that, because the imported inputs were consumed in the production of castings which were subsequently exported, the duty-free importation of these inputs under the advance license program did not constitute a countervailable subsidy. Subsequently, in *1996 Castings* (63 FR 64050 (Nov. 18, 1998)), we stated that we would reevaluate the program in light of new information as to how the program operates. In the petition for this investigation, petitioners provided new substantive information which indicated that the GOI does not value the licenses according to the inputs actually consumed in the production of the exported good. Based on this information, we initiated a reexamination of the advance license program.

SAIL used advance licenses during the POI. As explained above, section 351.519 of the *CVD Regulations* contains the criteria used to determine whether programs which provide for the remission, exemption, or drawback of import duties are countervailable. Under section 351.519(a)(4), the entire amount of an import duty exemption is countervailable if the government does not have in place and apply a system or procedure to confirm which imports are consumed in the production of the exported product and in what amounts, or if it has not carried out an examination of actual imports involved to confirm which imports are consumed in the production of the exported product.

The GOI reported in its questionnaire response and GOI officials explained at verification that products imported under an advance license need not be consumed in the production of the exported product. Upon exportation, in order to obtain an advance license, the exporter submits a listing of inputs used to produce the export shipment. While some of these inputs may be imported items, the GOI has no way of knowing whether the inputted items were imported or purchased domestically. Because the GOI then issues the advance license based on this list of inputted items, we find that the GOI does not base the licenses it issues on the amount of import duties that were payable on the imported items that were consumed in the production of the export shipment, *i.e.*, the exported merchandise. In addition, because the licenses specify ranges of quantities to be imported rather than an actual amount of duty exemption that can be claimed, the actual value of the advance licenses is not known at the time the license is issued. Therefore, we determine that the GOI has no system in place to confirm that the inputs are consumed in the production of the exported product. In addition, the GOI does not carry out, nor has it carried out, examinations of actual inputs involved. Consequently, under section 351.519 (a)(4) of the *CVD Regulations*, the entire amount of import duty exemption earned by SAIL during the POI constitutes a benefit. Because only exporters can receive advance licenses, this program constitutes an export subsidy under section 771(5A)(B) of the Act. A financial contribution is provided by the program under section 771(5)(D)(ii) of the Act because the GOI foregoes the collection of import duties.

Under section 351.524(c) of the *CVD Regulations*, this program provides a recurring benefit because advance licenses are issued on a shipment-by-shipment basis. SAIL reported the advance licenses it used and sold during the POI which it received for exports of subject merchandise to the United States and the application fees it paid in order to obtain those licenses. Because SAIL was able to segregate its advance licenses according to specific export shipments, we included in these calculations exemptions claimed and proceeds realized during the POI which stemmed from exports of subject merchandise to the United States only. As in the *Preliminary Determination*, we continue to determine that benefits from advance licenses are conferred as of the date they are used, not the date of exportation of the export shipment for which the pertinent advance license is earned. *See* Department's Position of Comment 1 and Comment 2 below. We also determine that the application fees paid by SAIL 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.

To calculate the program rate for the countervailable benefits conferred to SAIL from its use and sale of advance licenses, we first added the values of import duty exemptions realized by SAIL from the use of advance licenses during the POI (net of application fees) and the proceeds SAIL realized from sales of advance licenses during the POI (net of application fees). We then divided the total benefit by SAIL's total value of export of subject merchandise to the United States during the POI. On this basis, we determine the net countervailable subsidy from this program to be 3.33 percent *ad valorem*.

C. Special Import Licenses (SILs)

During the POI, SAIL sold through public auction two other types of import licenses—SILs for Quality and SILs for Star Trading Houses. SILs for Quality are licenses granted to exporters which meet internationally-accepted quality standards for their products, such as IS0 9000 (series) and IS0 14000 (series). SILs for Star Trading Houses are licenses granted to exporters that meet certain export targets. Both types of SILs permit the holder to import products listed on a ''Restricted List of Imports'' in amounts up to the face value of the SIL, but they do not relieve the importer of import duties.

The Department's practice is that the sale of special import licenses constitutes an export subsidy because companies received these licenses based on their status as exporters. *See, e.g., 1996 Castings* and *1994 Castings*. No new substantive information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this determination. Therefore, in accordance with section 771(5)(B) of the Act, we continue to determine that this program constitutes a countervailable export subsidy and that the financial contribution in the form of the revenue received on the sale of licenses constitutes the benefit.

Because the receipt of SILs cannot be segregated by type or destination of export, we calculated the program rate by dividing the total amount of proceeds SAIL realized during the POI from the sales of these licenses by the value of SAIL's total exports. On this basis, we determine the net countervailable subsidy from this program be 0.15 percent *ad valorem. See, also,* Comment 5 of the ''Interested Party Comments'' section.

D. Export Promotion Capital Goods Scheme (EPCGS)

The EPCGS provides for a reduction or exemption of customs duties and an exemption from excise taxes on imports of capital goods. Under this program, producers may import capital equipment at reduced rates of duty by undertaking to earn convertible foreign exchange equal to four to six times the value of the capital goods within a period of five to eight years. For failure to meet the export obligation, a company is subject to payment of all or part of the duty reduction, depending on the extent of the export shortfall, plus penalty interest.

In the *Final Negative Countervailing Duty Determination: Elastic Rubber Tape From India*, 64 FR 19125 (April 19, 1999) (*Elastic Rubber Tape*), we determined that the import duty reduction provided under the EPCGS was a countervailable export subsidy. *See Elastic Rubber Tape*, 64 FR at 19129–30. We also determined that the exemption from the excise tax provided under this program was not countervailable. *See Elastic Rubber Tape*, 64 FR at 19130. No new information or evidence of changed circumstances has been provided to warrant a reconsideration of these determinations. Therefore, we continue to find that import duty reductions provided under the EPCGS to be countervailable export subsidies.

SAIL reported that it imported machinery under the EPCGS in the years prior to the POI and during the POI. For some of its imported machinery, SAIL met its export requirements. Subsequently, the amount of import duties on those imports for which SAIL claimed exemption was completely waived by the GOI. However, SAIL has not completed its export requirements for other imports of capital machinery. Therefore, although SAIL received a reduction in import duties when the capital machinery was imported, the final waiver on the potential obligation to repay the duties has not yet been made by the GOI.

We determine that SAIL benefitted in two ways by participating in this program. The first benefit to SAIL is the benefit from the waiver of import duty on imports of capital equipment. SAIL met its export requirement with respect to certain imports of capital equipment. Because the GOI has formally waived the unpaid duties on those imports, we have treated the full amount of the waived duty exemptions as a grant received in the year the waiver of unpaid duties occurred. For other imports of capital machinery, SAIL has not completed its export commitments and the final waiver of the potential obligation to repay the duties on those imports has not yet been made by the GOI.

Section 351.524 of the *CVD Regulations* specifies the criteria to be used by the Department in determining whether to allocate the benefits from a countervailable subsidy program. Under the *CVD Regulations*, recurring benefits are not to be allocated but are to be expensed to the year of receipt, while non-recurring benefits are to be allocated over time. In this investigation, non-recurring benefits will be allocated over 15 years, the AUL of assets used by the steel industry as reported in the IRS tables.

Normally, tax benefits are considered to be recurring benefits and are expensed in the year of receipt. Since import duties are a type of tax, the benefit provided under this program is a tax benefit, and, thus, normally would be considered a recurring benefit. However, the *CVD Regulations* recognize that, under certain circumstances, it is more appropriate to allocate over time the benefits of a program traditionally considered a recurring subsidy, rather than to expense the benefits in the year of receipt. Section 351.524(c)(2) of the *CVD Regulations* allows a party to claim that a recurring subsidy should be treated as a non-recurring subsidy and enumerates the criteria to be used by the Department in evaluating such a claim. In the ''Explanation of the Final Rules'' (the Preamble) to the *CVD Regulations*, the Department provides an example of when it may be more appropriate to consider the benefits of a tax program to be non-recurring benefits, and, thus, allocate those benefits over time. We also stated in the Preamble to the *CVD Regulations* that, if a government provides an import duty exemption tied to major capital equipment purchases, it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring, even though import duty exemptions are on the list of recurring subsidies. See *CVD Regulations*, 63 FR at 65393. Because the benefit received from the waiver of import duties under the EPCGS is tied to the capital assets of SAIL, and therefore, is just such a benefit, we determine that it is appropriate to treat the benefit conferred to SAIL as non-recurring.

In its questionnaire response, SAIL reported all of the capital equipment imports it made using EPCGS licenses and the application fees it paid to obtain its EPCGS licenses. At verification, we confirmed the accuracy of the information submitted and obtained clarifications regarding certain amounts of duty waived, the timing of the waivers, and the application fees paid. We determine that the application fees paid by SAIL 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.

In order to calculate the benefit received from the waiver of SAIL's import duties on its capital equipment imports, we allocated the amount of duty waived (less application fees paid) beginning with the year amount of import duty outstanding was formally waived (not at the time the export requirements were met). As explained above in the ''Subsidies Valuation Information'' section, SAIL realized its non-recurring benefits under this program in two separate years. For each of those years, we performed the ''0.5 percent test'' prescribed under section 351.524(b)(2) of the *CVD Regulations.* Based on our test result, the amount of non-recurring benefit realized by SAIL in the first year must be expensed but the amount of non-recurring benefit realized in the second year is to be allocated. Accordingly, we determine that it is appropriate to allocate this benefit over the average useful life of assets in the industry, as set forth in the ''Subsidies Valuation Information'' section, above.

A second type of benefit received under this program was conferred on SAIL involve the import duty reductions received on the imports of capital equipment for which SAIL has not yet met its export requirements. For those capital equipment imports, SAIL has unpaid duties that may have to be paid to the GOI if the export requirements are not met. Therefore, we determine that the company had outstanding contingent liabilities during the POI. When a company has an outstanding liability and repayment of that liability is contingent upon subsequent events, our practice is to treat any balance on that unpaid liability as an interest-free loan. *See* section 351.505(d)(1) of the *CVD Regulations.*

We determine that the amount of contingent liability to be treated as an interest-free loan is the amount of the import duty reduction or exemption for which SAIL applied but, as of the end of the POI, was not finally waived by the GOI. We calculated this benefit to be the interest that SAIL would have paid during the POI had it borrowed the full amount of the duty reduction at the time of import. Pursuant to section 351.505(d)(1) of the *CVD Regulations,* the benchmark for measuring the benefit is a long-term interest rate because the event upon which repayment of the duties depends (*i.e.,* the date of expiration of the time period for SAIL to fulfill its export commitments) occurs at a point in time more than one year after the date the capital goods were imported.

To calculate the program rate, we combined the sum of the allocated benefits attributable to the POI and the benefit conferred on SAIL in the form of a contingent liability loan. We then divided that combined total benefit by the total value of SAIL's exports to all destinations during the POI. On this basis, we determine the net countervailable subsidy from this program to be 0.25 percent *ad valorem. See, also,* Comment 6 of the ''Interested Party Comments'' section.

E. Pre-Shipment and Post-Shipment Export Financing

The Reserve Bank of India (RBI), through commercial banks, provides short-term pre-shipment financing, or ''packing credits,'' to exporters. Upon presentation of a confirmed export order or letter of credit to a bank, companies may receive pre-shipment loans for working capital purposes, *i.e.*, for the purchase of raw materials, warehousing, packing, and transporting of export merchandise. Exporters may also establish pre-shipment credit lines against which they may draw as needed. Credit line limits are established by commercial banks, based upon a company's creditworthiness and past export performance, and may be denominated in either Indian rupees or in foreign currency. Companies that have pre-shipment credit lines typically pay interest on a quarterly basis on the outstanding balance of the account at the end of each period.

Commercial banks extending export credit to Indian companies must, by law, charge interest on this credit at rates determined by the RBI. During the POI, the rate of interest charged on pre-shipment, rupee-denominated export loans up to 180 days was 12.0 and 13.0 percent. For those loans over 180 days and up to 270 days, banks charged interest at 15.0 percent. The interest charged on foreign currency denominated export loans up to 180 days during the POI was a 6-month LIBOR rate plus 2.0 percent for banks with foreign branches, or plus 2.5 percent for banks without foreign branches. For those foreign currency denominated loans exceeding 180 days and up to 270 days, the interest charged was 6-month LIBOR plus 4.0 percent for banks with foreign branches, or plus 4.5 percent for banks without foreign branches. Exporters did not receive the concessional interest rate if the loan was beyond 270 days.

Post-shipment export financing consists of loans in the form of discounted trade bills or advances by commercial banks. Exporters qualify for this program by presenting their export documents to their lending bank. The credit covers the period from the date of shipment of the goods, to the date of realization of export proceeds from the overseas customer. Post-shipment financing is, therefore, a working capital program. This financing is normally denominated in either rupees or in foreign currency, except when an exporter used foreign currency pre-shipment financing, then the exporter is restricted to post-shipment export financing denominated in the same foreign currency.

In general, post-shipment loans are granted for a period of no more than 180 days. The interest rate charged on these foreign currency denominated loans during the POI was LIBOR plus 2.0 percent for banks with overseas branches or LIBOR plus 2.5 percent for banks without overseas branches. For loans not repaid within the due date, exporters lose the concessional interest rate on this financing.

The Department has previously found both pre-shipment export financing and post-shipment export financing to be countervailable, because receipt of export financing under these programs was contingent upon export performance and the interest rates were lower than the rates the exporters would have paid on comparable commercial loans. *See, e.g., 1994 Castings,* 62 FR at 32998. No new substantive information or evidence of changed circumstances has been submitted in this investigation to warrant reconsideration of this finding. Therefore, in accordance with section 771(A)(B) of the Act, we continue to find that pre-shipment and post-shipment export financing constitute countervailable export subsidies.

To determine the benefit conferred on SAIL through the its rupee-denominated pre-shipment export financing, we compared the interest rate charged on these loans to a benchmark interest rate. SAIL reported that, during the POI, it received and paid interest on commercial, short-term, rupee-denominated cash credit loans which were not provided under a GOI program. Cash credit loans are the most comparable type of short-term loans to use as a benchmark because, like the pre-export loans received under this program, cash credit loans are denominated in rupees and take the form of a line of credit which can be drawn down by the recipient. Thus, we used these loans to calculate a company-specific, weighted-average, rupee-denominated benchmark interest rate. We compared this company-specific benchmark rate to the interest rates charged on SAIL's pre-shipment rupee-denominated loans and found that the interest rates charged were lower than the benchmark rates. Therefore, in accordance with section 771(5)(E)(ii) of the Act, this program conferred countervailable benefits during the POI because the interest rates charged on these loans were less than what a company otherwise would have had to pay on a comparable short-term commercial loan.

To calculate the benefit from these pre-shipment loans, we compared the actual interest paid on the loans with the amount of interest that would have been paid at the benchmark interest rate. Where the calculated amount of benchmark interest exceeded the actual interest paid, the difference is the benefit. We then divided the total amount of the benefit by SAIL's total exports. SAIL did not have any post-shipment rupee-denominated loans outstanding during the POI.

During the POI, SAIL also utilized pre-shipment and post-shipment export financing denominated in U.S. dollars. To determine the benefit conferred from this dollar pre-shipment and post-shipment export financing, we again compared the program interest rates to a benchmark interest rate. We used the company-specific interest rates from SAIL's ''bankers acceptance facility'' loans to derive the benchmark. SAIL's bankers acceptance facility loans were the only commercial short-term dollar lending received by the company during the POI. Because the effective rates paid by the exporters are discounted rates, we derived from the bankers acceptance facility rates a discounted weighted-average, dollar-denominated benchmark interest rate. We compared this company-specific benchmark interest rate to the interest rates charged on pre-shipment and post-shipment dollar-denominated loans and determined that the program interest rates were higher than the benchmark interest rate. Therefore, we determine that SAIL did not benefit from pre-shipment and post-shipment dollar-denominated export financing during the POI.

We determine the net countervailable subsidy from rupee-denominated pre-shipment export financing to be 0.10 percent *ad valorem. See, also,* Comment 7 of the ''Interested Party Comments'' section.

F. Loan Guarantees From the GOI

In its questionnaire response, the GOI reported that it has not extended loan guarantees pursuant to any program *per se.* Rather, the Ministry of Finance extends loan guarantees to selected Indian companies on an *ad hoc* basis, normally to public sector companies in particular industries. The GOI also reported that GOI loan guarantees are not contingent on export performance nor are they contingent on the use of domestic over imported goods. The GOI stated that, while it has not extended loan guarantees to the steel sector since 1992, it continues to extend loan guarantees to other industrial sectors on an *ad hoc* basis.

During the POI, SAIL had several long-term, foreign currency loans outstanding on which it had received loan guarantees from the GOI and the State Bank of India (SBI). According to SAIL, the loan guarantees were earmarked for certain activities related to the company's steel production (*i.e.,* worker training, modernization activities, etc.). In contradiction to the GOI's questionnaire response, SAIL finalized a loan agreement and, thus, received a GOI loan guarantee as late as 1994.

Section 351.506 of the *CVD Regulations* states that, in the case of a loan guarantee, a benefit exists to the extent that the total amount a firm pays for the loan with a government-provided guarantee is less than the total amount the firm would pay for a comparable commercial loan that the firm could actually obtain on the market absent the government-provided guarantee, including any differences in guarantee fees. Thus, to determine whether a government loan guarantee confers a benefit, we compare the total amount paid by the company (*i.e.*, the effective interest and guarantee fees) for the loan with the total amount it would have paid for a comparable commercial loan.

Using the benchmark rates discussed in the ''Subsidies Valuation Information'' section above for comparison purposes, we found that the total amounts SAIL paid for its GOI-guaranteed loans were less than total amounts SAIL would have otherwise paid for comparable commercial loans. Thus, the loan guarantees from the GOI conferred a benefit on SAIL equal to the difference between these two amounts. The GOI's provision of loan guarantees is specific under section 771(5A)(D)(iii)(II) of the Act because it is limited to certain companies selected by the GOI on an *ad hoc* basis. In addition, a financial contribution is provided under the program as defined under section 771(5)(D)(i) of the Act. To calculate the rate of subsidy during the POI, we divided the benefit by SAIL's total sales during the POI. Consistent with our practice regarding transnational subsidies, we did not include in our calculations SAIL's World Bank, KFW, and Finnish Export Credit loans.

On this basis, we determine the net countervailable subsidy to be 0.14 percent *ad valorem. See, also,* Comment 8 and Comment 9 of the ''Interested Party Comments'' section.

II. Program Determined To Be Not Countervailable

GOI Loans Through the Steel Development Fund (SDF)

The SDF was established in 1978 at a time when the steel sector was subject to price and distribution controls. From 1978 through 1994, an SDF levy was imposed on all sales made by India's integrated producers. The proceeds from this levy were then remitted to the Joint Plant Committee (JPC), the administrating authority consisting of four major integrated steel producers in India that have contributed to the fund over the years. These levies, interest earned on loans, and repayments of loans due are the sources of funds for the SDF.

Under the SDF program, companies that have contributed to the fund are eligible to take out long-term loans from the fund at favorable rates. All loan requests are subject to review by the JPC along with the Development Commission for Iron and Steel. At verification, we confirmed the GOI's claim that it has not contributed any funds to the SDF. Because the SDF was funded by producer levies and other non-GOI monies and there is no evidence of direct or indirect funding by the GOI, SDF loans do not confer a financial contribution as defined under section 771(5)(D)(ii) of the Act. Therefore, consistent with our practice regarding such producer funds, SAIL's SDF loans do not confer a financial contribution from the GOI to SAIL.

On this basis, we determine that the SAIL's SDF loans are not countervailable. *See, also,* Comment 10 of the ''Interested Party Comments'' section.

III. Programs Determined To Be Not Used

Based upon the information provided in the responses and the results of verification, we determine that SAIL did not apply for or receive benefits under the following programs during the POI:

A. Passbook Scheme (PBS)

B. Advanced Intermediate Licenses

C. Special Imprest Licenses

D. Tax Exemption for Export Profits (Section 80 HHC of the India Tax Act)

Interested Party Comments

Comment 1: The Use of Advance Licenses and Duty Drawback Equivalency

The GOI and SAIL argue that the use of advance licenses is the equivalent to the use of a non-excessive duty drawback program. They contend that, while the structure of India's advance license program may differ from traditional duty drawback programs, the use of advance licenses is not countervailable. Rather, through the use of advance license, exporters obtain duty exemptions that do not exceed the duties payable on the imported inputs used to produce the exported product. They argue that the GOI has a reasonable and effective procedure for confirming which inputs are consumed in the production of the exported products, and in what amounts, and that the GOI uses the SIO norms to ensure against excess drawback.

The GOI and SAIL contend that the mere fact that duty-free imports under a particular advance license need not be physically incorporated into the product exported under the same advance license does not automatically render the advance license program a subsidy. They argue that the regulations only require that the duty-free inputs be used to produce the type of product that is being exported. The regulations do not require that the actual exported product be physically incorporated with the duty-free imports made under the same advance license. They also state that the use of post-export advance licenses is similar to the use of the U.S. substitution drawback regime in that the applicant need only correlate or link the imported items with exported products.

Petitioners contend that the advance license program is not a permissible duty drawback program. First, they argue that there is no requirement that imported inputs be used in the production of the exported merchandise. They argue that the GOI's reliance on the SIO norms and the value-added requirement does not ensure that the amount of benefits granted are not excessive. They argue that the relevant SIO norm is neither a producer-specific nor product-specific norm'' but encompasses a broad range of carbon, alloy and stainless steel products made by all producers of such products in India. Therefore, the SIO norm does not limit the amount of benefits granted to SAIL to those imported inputs that SAIL actually consumes in the production of exported cut-to-length plate.

In addition, Petitioners contend that the advance license program does not meet the substitution drawback criteria because the GOI has no mechanism for tracking items imported under advance license and that, in the absence of such a mechanism, there can be no means for ensuring that any domestic inputs used as substitutes are used in the same quantities, and are of the same quality and characteristics as the imported inputs.

Department's Position: We disagree with respondents. The first step in our analysis is to examine whether the GOI has in place and applies an effective system for confirming that imported inputs are consumed in the production of the exported product and in what quantities. Although section 351.519 of the regulations recognizes a longstanding principle that governments may remit or drawback import charges levied on imported inputs, the caveat to that provision is that such recognition will be accorded when the finished product is exported. 19 CFR 351.519 (1999). Section 351.519 incorporates the rule set forth in Annexes II and III of the Agreement on Subsidies and Countervailing Measures (''SCM Agreement''). These annexes provide the analytical framework for addressing the issue. The preamble to the *CVD Regulations* makes clear that we first determine whether the government has a sufficient system in place to confirm the consumption of the imported inputs and the quantity of the imported inputs consumed in the production of the exported product.

> [u]nder the modified [linkage] test, we will *first* examine whether the exporting government has a system in place that confirms which inputs are consumed in the production of the exported product, and in what amounts, and which taxes are imposed on the inputs consumed in production. Where we find that such a system is in operation, we will examine the system to determine whether it is reasonable, effective, and based on generally accepted commercial practices in the exporting country.

CVD Regulations, 63 FR at 65348, 65413 (Nov. 25, 1998) (emphasis added). Thus, only if a government has a legitimate and effective monitoring system will we then attempt to determine whether that system prevents excessive drawback. Of course, qualification as a substitution drawback system also requires that a government has in place and applies a monitoring system to confirm consumption, quantity, and, additionally, equality in characteristics of domestic inputs used in place of imported ones. 19 CFR 351.519(a)(ii).

At verification, GOI officials stated that the GOI had no way of confirming whether imported inputs were actually consumed in the production of steel. They also stated that the GOI had no way of knowing whether home market inputs were used in the production of the exported product or whether imported inputs are used to produce products destined for export or the domestic market. They explained the GOI uses its SIO Norms to establish the quantities and maximum import values to be imported under an advance license.

We determine that the use of advance licenses is not equivalent to the use of a permissible duty drawback program. Upon review of the application procedures and the process for issuing a licenses, we found that GOI issues an advance license based on a list of inputs submitted by the exporter and the quantities prescribed in the SIO norms. In this application and approval process, however, there is no way to ascertain whether the items listed for an export shipment were imported inputs or domestic inputs. For a given input listed in an application, the GOI does not know how much was imported and how much was purchased domestically. Therefore, the GOI issued advance licenses without confirming whether the items, upon which it based those licenses, were indeed imported inputs consumed in the production of the export shipment of domestic inputs.

We also determine that the use of advance licenses is not equivalent to the use of a permissible substitution drawback program. The GOI does not have a system in place for confirming that inputs imported under that advance license are used to produce the exported product. The GOI merely presumes that the imported inputs were consumed in the production of the exported product because these inputs are needed for production of cut-to-length plate. Under Annex III to the SCM agreement and section 351.519 of the *CVD Regulations,* the drawback substitution scheme must accomplish substitution on a one-to-one ratio between the imported input and the home market input. The GOI has also failed to provide evidence that such an objective is accomplished under the advance license system.

In summary, the GOI has no way to know whether imported inputs are consumed in subsequently exported products as required under Annex III to the SCM agreement or whether an amount imported was equal to the home market substitutes consumed in the exported product. Consequently, the entire amount of the benefit conferred is countervailable, as directed under section 351.519 of the *CVD Regulations* and reflected in Annexes II and III to the SCM Agreement. Because the GOI does not have a sufficient monitoring system, there is no need to further address whether the system prevents excess drawback or is a viable substitution drawback system.

Finally, at the hearing, the GOI argued that the type of advance licenses used by SAIL is no longer available. This argument was not made in the GOI's case brief and the record contains no factual evidence on which to base this statement. Section 351.310 states that arguments presented at the hearing are limited to those arguments raised in the case briefs. Because the Government of India failed to make this argument in its case brief, we will not address this argument.

Comment 2: Timing and Calculation of Advance License Benefits

SAIL states that it is the Department's practice to measure the benefit from an export subsidy according to the time of export. SAIL then argues that the Department should measure any benefit to SAIL from its advance licenses on an ''as earned basis'' because SAIL knew the exact amount of duty exemption that it earned under each license at the time of export. SAIL concludes that, because it did not earn any benefits under the advance license program during the POI, the Department may not allocate any benefits to SAIL for its use of advance licenses during the POI. SAIL also argues that, whenever a license is tied to a particular market and a particular product, the Department should attribute the benefit only to that market and product.

Petitioners state that the Department's practice is to measure the benefit of an export subsidy on an ''as earned'' basis when the benefit is calculated as a percentage of the FOB value of the exported merchandise on a shipment-by-shipment basis and the exporter knows the amount of benefit it will receive at the time of export. They argue that advance licenses are not valued according to these criteria and, thus, the benefits should be calculated at the time they were used or sold. They argue that the SIO norm is used to determine the quantities of specified articles the license holder will be eligible to import free of duty. They state that an advance license holder may know the quantities of the specified articles that it will be eligible to import but, until such merchandise is actually imported and the dutiable value of the merchandise is established, it does not know the value of the customs duties that will be forgiven.

Petitioners also argue that the Department's advance license calculations for the *Preliminary Determination* contain two ministerial errors. They argue that the value of one of the customs duty exemptions and the value of one of the applications fees were incorrectly brought forward from one spreadsheet to another. In addition, they voice a concern that SAIL's submissions regarding advance licenses may not be accurate. They also point out that the information in the advance license documentation submitted by SAIL in Exhibit 27 to its June 25, 1999 supplemental questionnaire response does not reconcile with the data listed for that license in SAIL verification exhibit VE–19.

Department Position: Upon making an export shipment, an exporter can apply for and obtain an advance license. The advance license will list the specific items which can be imported under the license, including the total quantity of goods which can be imported and the maximum value of those future imports that can be made using that license. The GOI establishes those quantities and maximum import values using its SIO Norms. Although an exporter knows the quantities and maximum value of imports it could make under the advance license, the actual value of duty exemptions cannot be determined until the license is actually used by the exporter. Because the actual benefit derived from the use of advance licenses, *i.e.,* the amount of duty exemptions received by the exporter, can only be determined when the license is used, respondents are incorrect when they state that the benefit from this program should be determined on an ''as earned basis.'' Therefore, we calculated SAIL's benefit from this program based on the date the company used advance licenses. This methodology is consistent with prior Department practice. *See e.g., Final Negative Countervailing Duty Determination; Fresh Atlantic Salmon from Chile,* 63 FR 31347, 31440–41 (June 9, 1998) (exports were not associated with particular export transactions so amount could not be calculated); *Certain Pasta from Italy,* 63 FR 17372, 17378 (April 9, 1998) (Preliminary Results of First Countervailing Duty Administrative Review) (uncertainty in restitution benefits because amount granted did not always equal the amount declared by the company); *Final Results of Countervailing Administrative Review: Certain Iron Metal Castings from India,* 56 FR 41658, 41661–62 (Aug. 22, 1991) (lag time between export and identification of the price chosen to calculate IPRS payment).

We do not however agree with Petitioners' comments about the accuracy of SAIL's advance licenses data. The materials provided in Exhibit 27 include a sample application, sample shipping bills, and a sample advance license. These documents do not represent a complete set of supporting documentation for one particular license but are merely examples from different transactions. Thus, it is not surprising that the destination information on these sample shipping bills does not match the destination data listed for the advance license also provided in Exhibit 27. Most importantly, we verified the accuracy of all the information used in the calculation of the benefit for this program.

Comment 3: The Use of DEPS Licenses and Duty Drawback Equivalency

The GOI and SAIL argue that the use of DEPS licenses is equivalent to the use of a non-excessive duty drawback program. They contend that, for the reasons discussed in the above section regarding advance licenses, the SIO Norms and the program's value-added requirement constitute an effective monitoring system. They also argue that the fact that the DEPS provides the exporter duty drawback in the form of credits rather than cash does not make the program a subsidy. In addition, SAIL notes that, during the POI, it used all of its DEPS credits to import a single major input used in the production of the subject merchandise.

Petitioners argue that the DEPS does not qualify as a permissible drawback program and therefore SAIL's DEPS credits are countervailable. They argue DEPS credits may be used to import any article, not just inputs used in the production of the exported merchandise. They further state that SAIL is not required to import or consume any imported inputs in the production of the exported goods in order to obtain post-export DEPS credits. They also argue that, because post-export DEPS credits can be used to offset duties on any imports and are transferable, exemptions are not limited to inputs consumed in the production of the exported goods. Petitioner state that the fact that SAIL may have imported a single major input is irrelevant because the Department's regulations are clear that the government in question (not the importer) must maintain an effective system for guarding against excessive drawback or the entire amount of the benefits will be countervailable.

Department Position: We disagree with respondents for the reasons outlined in response to Comment 1, above. The GOI issues DEPS licenses without confirming whether and in what amounts imported inputs were used to produce the export shipment against which the license is to be based. Consequently, the GOI has no system for monitoring that DEPS licenses are valued according to the import duties that were payable for inputs imported for the production of the exported product.

Comment 4: Timing and Calculation of DEPS Benefits

SAIL argues that, if the DEPS is determined to be countervailable, the Department should measure the benefit from its post-export DEPS credits on an ''as used'' basis. SAIL explains that, due to administrative irregularities and confusion with regard to how the program operated, it did not know how much credit it earned at the time of export.

Petitioners argue the Department should measure the benefit to SAIL under the DEPS using all of the DEPS credits ''earned'' by SAIL on its exports of the subject merchandise to the United States during the POI. They state that this is the appropriate methodology because (1) post-export DEPS credits are provided on a shipment-by-shipment basis, and (2) SAIL knew the exact amount of DEPS credits it would earn on its shipments because the credit rates are published by the GOI.

Department's Position: We agree with petitioners. Under the new CVD regulations, the benefit is measured on an ''as earned'' basis under the following conditions. If the program permits exemption of import duties upon export, the Department normally will consider the benefit as having been received upon exportation. 19 CFR 351.519(b)(2) (1999). We calculate the benefit on an ''earned'' basis (that is upon export) where it is provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis and the exact amount of the exemption is known. *Certain Welded Carbon Steel Pipe and Tube and Welded Carbon Steel Line Pipe From Turkey; Final Results and Partial Recission of Countervailing Duty Administrative Reviews,* 63 FR 18885, 18888 (April 16, 1998). *Accord Cotton Shop Towels from Pakistan; Preliminary Results of Countervailing Duty Administrative Reviews,* 61 FR 50273, 50275 (Sept. 25, 1996); *Certain Iron-Metal Castings From India; Final Results of Countervailing Duty Administrative Review,* 60 FR 44843, 44844 (Aug. 29, 1995).

DEPS credits are based upon the f.o.b. value of the shipment. Thus, the amount of the benefit is known to the recipient upon export. Unlike advance licenses, which are issued according to the quantities and maximum values of the items to be imported, DEPS credits are equal to the amount of import duty exemptions that the credit-holder is eligible to claim. Despite some initial uncertainty on the part of SAIL as to how the program operated and the amount of duty exemption that would be granted, SAIL was able to confirm the rates applicable and know the value of its credits by June 1997, which was not long after the program was implemented and at the beginning of the POI.

Comment 5: Calculation of the Benefit from Selling SILs

Petitioners point out that, at verification, SAIL officials explained that SAIL reported its revenues from its sales of SILs net of tax. They argue that, because sales tax does not qualify as an application fee, deposit or other payment pursuant to 771(6)(A) of the Act, the Department should include in its calculations the sales taxes reported in SAIL verification exhibit VE–13.

SAIL argues that the Department should not include the sales taxes in its calculations pertaining to sales of SILs. They argue that SAIL does not realize any benefit when the buyer of a SIL incurs a sales tax liability and pays it through the seller (SAIL).

Department's Position: The only adjustments which can be made to a subsidy benefit are those enumerated under section 771(6) of the Act. Under section 771(6)(A), the Department is only authorized to adjust the benefit from a subsidy by ''any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy.'' No other adjustments to the benefit received under this program are applicable under section 771(6)(A) of the Act. Therefore the revenue earned by respondent on its special import licenses is the countervailable benefit received by SAIL under this program. No other offsets or adjustments to that benefit, such as taxes, are authorized under the Act.

Comment 6: Timing and Calculation of EPCGS Benefits

SAIL argues the Department should treat SAIL's EPCGS import duty exemptions as non-recurring grants and allocate the benefits during the POI pursuant to section 351.524 of the *CVD*

Regulations. SAIL explains that, for its imports of capital equipment under the EPCGS, SAIL received partial duty exemptions at the time of importation. SAIL further explains that the exemptions were subject to certain export performance commitments and that SAIL has always met its export commitments under the program.

Petitioners argue the Department should not treat SAIL's EPCGS benefits as being received at the time the capital goods were imported. They argue that the Department has previously considered and rejected this argument in *Elastic Rubber Tape,* 64 FR 19125, 19129 (April 19, 1999). They argue that the Department should allocate the benefits according to the dates that the export obligations were fulfilled. For the instances in which SAIL had export obligations outstanding during the POI, they argue that the Department should regard the amount of duty exemption as an interest-free loan and calculate the benefit by applying its contingent liability methodology.

They also note that, at verification, SAIL officials indicated that SAIL paid a single application fee for the three licenses utilized during the POI. Accordingly, they argue that the Department should exclude from its calculations only the single application fee paid by SAIL. In addition, they note that, at verification, the Department discovered a slight error in the duty rate reported for one of SAIL's capital equipment imports under the EPCGS.

Department's Position: As explained above, we treated the benefits provided under the EPCGS as non-recurring benefits and allocated them according to when the pertinent export requirement was lifted and not the date of importation. Although SAIL claims it has always met its export requirements, there is no evidence on the record that the GOI waived SAIL's export requirements. The benefit from this program, which is the waiver of the import duties, is not confirmed until the pertinent export requirements are met by the exporter. Therefore, the methodology proposed by SAIL, which is based on the date the capital equipment was imported, is not appropriate because that is not the point at which the waiver of duty is made.

In our final calculations, we subtracted the application fees discussed by petitioners only once and corrected for the error regarding the duty rate as well.

Comment 7: Benchmarks for Pre-shipment Export Financing

SAIL argues that the Department should use SAIL's commercial paper issuances rather than it's cash credit loans to determine whether a benefit is provided for rupee-dominated pre-shipment export financing. SAIL argues that the commercial paper issuances are preferable because they represent the most market-based arms-length interest rate for rupee-denominated short-term borrowing.

Petitioners argue that the Department should use SAIL's cash credit loans for benchmark purposes because they are the most comparable to SAIL pre-shipment export financing loans. They state that both types of credit are secured by the corporate assets of SAIL, but SAIL's commercial paper issuances are not secured.

Department's Position: Section 771(5)(E)(ii) of the Act states that the benefit from a loan program is based upon the difference the recipient pays for the program loan and the amount the recipient would pay on a comparable commercial loan. SAIL's rupee-denominated pre-shipment loan export loans and its cash credit loans operate in the same way, as running lines of credit which can be drawn against as needed. Therefore, we determine that the cash credit loan is a comparable commercial loan with respect to the pre-shipment loan provided under this program. The cash credit loan is also a ''market-based arms-length'' rupee-dominated short-term loan.

Comment 8: Treatment of SAIL's Long-Term Foreign Currency Loans

Citing section 351.527 of the CVD Regulations, SAIL argues that the Department should exclude from its calculations SAIL's foreign currency loan from the World Bank. SAIL then argues that the Department should also exclude SAIL's foreign currency supplier credit loans. SAIL explains that the financing structure for supplier credits—which is fixed by the suppliers, not SAIL—requires SAIL to pay a higher purchase price for all non-cash purchases of capital equipment from the supplier (as opposed to a lower purchase price if SAIL were to pay cash up-front). SAIL then argues SAIL derived no benefit from its supplier credits because they carry an ''implicit interest rate'' which exceeds the interest rate that was otherwise available on the comparable commercial market. In addition, SAIL argues that the Department should exclude from its calculations its Kreditanstalt fur Weideraufbau (KFW) loans and its Finnish Export Credit (FEC) supplier credit loans. SAIL argues that these loans are not countervailable because they were disbursed by government-owned banks in compliance to the Agreement on Guidelines for Officially Supported Export Credit (''OECD Consensus'').

The GOI and SAIL argue that SAIL's loans from the State Bank of India (SBI) should also not be included in the calculations. The GOI argues that the SBI's foreign currency loan guarantees are purely commercial in character and bear no relationship to the GOI's loan guarantee policies or practices. SAIL also argues that, in the *Preliminary Determination,* the Department erroneously treated SAIL's foreign currency loans from the SBI as GOI-guaranteed loans. SAIL argues that these loans were not guaranteed by the GOI but rather were guaranteed by the largest and most important commercial bank in India.

Petitioners argue that the SAIL's GOI loan guarantees were provided in limited numbers and therefore are specific. They then argue that the Department should include in its calculations all of the long-term guaranteed foreign currency loans reported by SAIL. Based on information obtained at verification that commercial bankers would have been unwilling to provide loan guarantees to SAIL, they argue the GOI's provision of loan guarantees on SAIL's loans from international lending or development institutions was not consistent with commercial considerations. With regard to SAIL's supplier credit loans, they argue that SAIL was unable to provide documentation that interest is factored into the amount of the loan. They argue that the GOI guarantees clearly played the decisive role in the lenders' decisions to grant SAIL these loans. Finally, they argue the loan guarantees provided by the GOI-owned SBI are countervailable. They maintain that, at the time SAIL received loan guarantees from the SBI, it could not have obtained guarantees from private sector banks because it was viewed as too great a financial risk. They also argue that the references to documents regarding the lending policies of the KFW and the FEC in SAIL's September 29, 1999 case brief constitute the submission of factual information after the deadline prescribed under 19 CFR 351.301(b)(1).

Department's Position: At verification, we discussed with SAIL officials the foreign currency loans SAIL received from the World Bank and the KFW, two well-known international lending/development institutions. We learned that SAIL also received supplier credit loans through FEC, which is a Finnish government bank. *See* SAIL Verification Report at 15. Consistent with our practice of not countervailing transnational subsidies, we excluded from our calculations all of SAIL's transnational loans. In addition, we excluded from the calculations any loans which were not guaranteed by the GOI. We do not agree with Petitioners' argument that SAIL could not have obtained commercial loan guarantees and therefore none of the guarantees provided to SAIL were commercial in nature. We are not examining the creditworthiness of SAIL in this investigation. *See Notice of Initiation of Countervailing Duty Investigations: Certain Cut-to-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea,* 64 FR 12996 (March 16, 1999) (*Initiation*). Therefore, information or argument regarding SAIL's financial health at the time it obtained its loans cannot be a basis for including or excluding from the calculations loans that were not guaranteed by the GOI.

Comment 9: Benchmarks for SAIL's GOI-Guaranteed Loans

SAIL argues that SAIL's SBI-guaranteed long-term foreign currency loans should be used for benchmark purposes in calculating the benefit conferred by the GOI guarantees that SAIL received. SAIL argues that the guarantee fee charged to SAIL by the SBI was a reasonable commercial guarantee fee, considering SAIL's status as a large public sector company in reasonable financial health. SAIL states that commercial foreign currency lenders in general regarded loan guarantees by the SBI as providing comparable security to GOI loan guarantees. Accordingly, SAIL argues that the Department should not use a methodology of comparing the total cost of borrowing, *i.e.,* the combination of interest and guarantee costs. Rather, SAIL argues that Department need only account for any difference in guarantee fees and should simply compare the GOI guarantee fee (1.20%) with the guarantee fee charged by SBI. Then the Department should multiply the difference by the outstanding balance during the POI for each GOI-guaranteed loan and divide the total by SAIL's total sales during the POI.

Petitioners argue that, in absence of a company-specific benchmark interest rate for SAIL, the Department should not use for benchmark purposes the ''lending rates'' published in *International Financial Statistics.* They argue that, pursuant to section 351.505(a)(3)(ii) of the *CVD Regulations,* the use of a national average interest rate is intended to be representative of a loan that ''could have been taken out'' by SAIL. They then argue that, during the period in which SAIL obtained GOI-guaranteed loans, SAIL could not have obtained loan guarantees from commercial banks. They state that a company viewed by commercial bankers as posing too great a risk to be eligible for loan guarantees could not have obtained loans at the same interest rates charged to SBI's best customers. Accordingly, they propose that the Department should adopt an approach which is analogous to applying a risk premium when a company is uncreditworthy. They argue that such an approach should be used with respect to the loans SAIL received from international lending or development institutions as well.

In its rebuttal brief, SAIL takes issue with Petitioners' argument that the Department should select benchmark interest rates which reflect an inability on the part of SAIL to obtain long-term long guarantees from commercial banks. SAIL argues that there is substantial evidence on the record that commercial banks were willing to make long-term foreign currency loans to SAIL, including evidence that independent credit rating agencies gave SAIL high ratings.

Department Position: We disagree with SAIL that SAIL's SBI-guaranteed long-term foreign currency loans can be used for benchmark purposes. The loans for which SAIL received guarantees from the SBI are not denominated in the same currency as any of SAIL's GOI-guaranteed long-term foreign currency loans and, in all but one instance, were agreed upon in different years. Therefore, the SBI-guaranteed loans cannot be used for benchmark purposes. We also disagree with SAIL that the Department should only consider differences in guarantee fees. Section 771(5)(E)(iii) of the Act makes clear the basis for calculating the benefit from a guaranteed loan is a comparison of what the recipient paid for the guaranteed loan (including any guarantee fees) with what the recipient would pay to obtain comparable commercial financing. This standard, which is repeated in section 351.506 of the *CVD Regulations*, replaced the pre-URAA practice, under which we followed the methodology proposed by SAIL. Given the change in standard, we have followed the methodology outlined in our regulations and compared the costs of the GOI-guaranteed loans with the appropriate benchmark as discussed in the ''Subsidies Valuation Information'' section above.

With respect to Petitioners'' concerns about using national average interest rates for benchmark purposes, we acknowledge that the ''lending rates'' published by the IMF are not ideal. However, there is no information on the record containing interest rates that can be regarded as preferable. As explained above, we attempted to obtain other information regarding long-term foreign currency interest rates. At verification, we were unable to obtain any information regarding the foreign currency or other long-term interest rates available during the years in which the GOI provided guaranteed loans to SAIL. The ''lending rates'' published in *International Financial Statistics* are the only interest rates on the record of this investigation which can reasonably be used for benchmark purposes. In addition, we did not initiate an examination of SAIL's creditworthiness. *See Initiation,* 64 FR 12996 (March 16, 1999). Consequently, we did not include a risk premium in the calculation of our benchmark.

Comment 10: SAIL's SDF Loans

Petitioners argue that SAIL's long-term SDF loans are countervailable under section 771(5)(B) of the Act. In short, they argue that (1) the levies used to fund the SDF are, in essence, taxes and thus constitute GOI contributions to the SDF, (2) the GOI controls the SDF funds, and (3) SAIL received a financial contribution from the GOI in the form of soft SDF loans. Throughout their initial and rebuttal comments regarding the SDF, petitioners refer to information contained in an article that was attached to their September 29, 1999, case brief.

Petitioners argue that the statute does not make an exception for governments that direct tax levies into special government-directed ''funds'' as opposed to placing such funds in the general treasury. They argue that section 771(5)(B)(iii) of the Act defines as countervailable the types of loans made by the GOI under the SDF because, under this statute, a government need not make a financial contribution itself to give rise to a subsidy. They then argue that, by making soft loans through the SDF, the GOI has foregone revenue to which it is entitled and has therefore made a financial contribution under section 771(5)(D)(ii). They also argue that, because the SDF was created through levies on sales to consumers, SAIL's SDF loans are transfers of funds from the GOI and therefore constitute financial contributions under section 771(5)(D)(i) of the Act.

The GOI and SAIL contend that SAIL's SDF loans are not countervailable. They argue that the SDF was funded from levies on steel producers and other non-GOI sources and that the Department's practice is to not countervail benefits received by producers from such ''producer'' funds.

They argue that, because the GOI did not contribute any funds to the SDF, SAIL has not received a financial contribution from the GOI as a result of its SDF loans.

In addition, SAIL notes that the article and related arguments contained in Petitioners case brief constitutes factual information. SAIL points out that this information was submitted after the time limit prescribed in section 351.301(b)(1) of the *CVD Regulations,* should not be made a made a part of the record, and should be ignored by the Department.

Department's Position: We agree with respondents. At verification, we confirmed that the SDF was funded by producer levies and other non-GOI sources. *See,* SAIL Verification Report at 10. Therefore, there is no basis for concluding that the SDF loans received by SAIL confer a financial contribution to SAIL from the GOI. In addition, there is no information on the record indicating that the GOI contributed tax revenues to the SDF either directly or indirectly. There is no information on the record indicating that the GOI controls the SDF. Accordingly, there is no basis on the record of this investigation for determining that SAIL's SDF loans are countervailable.

We agree with SAIL that Petitioners' case brief contains new factual information. We also agree that the information was submitted in violation of section 351.301(b)(1) of the *CVD Regulations.* We returned the brief and article to the Petitioners and requested that they submit a redacted brief, which contains no references or argument regarding the article or any new factual information. *See* Memorandum to file Re: Removal of Untimely Factual Information from the Record, dated December 13, 1999, which is on file in the public file of our Central Records Unit (Room B–0990 of the main Commerce Building). Therefore, all arguments relating to information in the article cannot be addressed.

Comment 11: Treatment of SAIL's Stockyard Sales

Petitioners argue that the figure reported for the total value of SAIL's sales it too large because the figure includes the f.o.b.(stockyard) value of SAIL's stockyard sales rather than the f.o.b.(factory) value of those sales. They argue that, in calculating the ad valorem program rates for SAIL, the Department should use an adjusted figure.

Department's Position: We agree with Petitioners. The original figure reported by SAIL includes the f.o.b. (stockyard) value of SAIL's stockyard sales rather than the f.o.b. (factory) value of those sales. At verification, we requested SAIL to derive the f.o.b. (factory) value of its stockyard sales. See SAIL Verification Report at 5 and 6. We adjusted the figure for SAIL's total value of sales during the POI so that the value of SAIL's stockyard sales is included on an f.o.b. (factory) basis. We used this adjusted sales figure for the final determination.

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 government and company officials and examining relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the GOI Verification Report and the SAIL Verification Report, which are on file in our Central Records Unit (Room B–099 of the main Commerce building).

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual countervailable subsidy rate for the company under investigation—SAIL. This rate will also be used for purposes of the ''all others'' rate. We determine that the total estimated net countervailable subsidy rates are as follows:

Producer/exporter	Net subsidy rate
Steel Authority of India (SAIL).	11.25% ad valorem.
All others	11.25% ad valorem.

In accordance with our Preliminary Determination, we instructed the U.S. Customs Service (Customs) to suspend liquidation of all entries of certain cut-to-length carbon-quality steel plate from India which were entered, or withdrawn from warehouse, for consumption on or after July 26, 1999, the date of the publication of our Preliminary Determination in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after November 23, 1999, but to continue the suspension of liquidation of entries made between July 26, 1999, and November 22, 1999.

If the ITC determines that material injury or threat of material injury does not exist, this investigation 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 the ITC determines that such injury does exist and issues a final affirmative determination, we will issue a countervailing duty order, reinstate suspension of liquidation under section 706(a) of the Act, and require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33229 Filed 12–28–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–816]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from France

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

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Jim Terpstra or Frank Thomson, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3965 or (202) 482–4793, respectively.

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''). In addition, unless otherwise indicated, all references are made to the Department's regulations at 19 CFR Part 351 (1998).

Final Determination: We determine that certain cut-to-length carbon-quality steel plate products (''CTL plate'') from France are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''*Suspension of Liquidation*'' section of this notice.

Case History

Since the preliminary determination in this investigation (*Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate from France,* (64 FR 41198, July 29, 1999)) (''*Preliminary Determination*''), the following events have occurred:

In September 1999, the Department conducted verification of Usinor S.A. (''Usinor'') and its affiliates (*i.e.,* Sollac S.A. (''Sollac''), GTS Industries S.A. (''GTS''), SLPM, Francosteel Corporation (''Francosteel''), and Berg Steel Pipe Corporation (''Berg'')). A public version of our report of the results of this verification is on file in room B–099 of the main Department of Commerce building, under the appropriate case number.

In November 1999, respondent submitted revised databases at the Department's request, pursuant to minor corrections discovered at verification. The petitioners (*i.e.,* Bethlehem Steel Corporation, Gulf States Steel, Inc., IPSCO Steel Inc., the United Steelworkers of America, and the U.S. Steel Group (a unit of USX Corporation)) and the respondent submitted case briefs on November 12, 1999, and rebuttal briefs on November 23, 1999. At the request of all parties, the scheduled public hearing was canceled.

Scope of Investigation

The products covered by the scope of this investigation are certain hot-rolled carbon-quality steel: (1) Universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (i.e., USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 1998, through December 31, 1998.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Usinor covered by the description in the ''*Scope of Investigation*'' section, above, and sold in France during the POI to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. 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. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondent in the following order of importance (which are identified in Appendix V of the questionnaire): painting, quality, grade specification, heat treatment, nominal thickness, nominal width, patterns in relief, and descaling.

Because Usinor had no sales of non-prime merchandise in the United States during the POI, we did not use home market sales of non-prime merchandise in our product comparisons See *e.g., Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Sweden* (63 FR 40449, 40450, July 29, 1998) (''*SSWR*'').

Changes From the Department's Preliminary Determination

As a result of verification findings and/or clerical errors outlined in the comments below, we have made the following changes from our *Preliminary Determination*: 1) we have added the additional coating, girthweld and unloading and stockpiling charges to Berg's gross price, in addition to its freight revenue, in deriving Berg's total sales price. *See* Interested Party Comment 1; 2) for those sales to the United States that involve Usinor's affiliated freight forwarders, we have used the average of the international freight expenses that do not involve Usinor's affiliated freight forwarders. We have used Usinor's reported domestic brokerage and handling expenses for all sales. *See* Interested Party Comment 3; 3) we have disregarded SLPM's reported indirect selling expenses in our analysis. *See* Interested Party Comment 6; 4) we have denied Usinor's claimed home market packing expense adjustment for all SLPM sales. *See* Interested Party Comment 8; 5) we have matched certain U.S. products to identical home market products. *See* Interested Party Comment 10; 6) we have determined appropriate home market sales for purposes of comparison to three U.S. products whose specifications were corrected at verification; 7) we have recalculated Usinor's home market inventory carrying costs based on the revised cost of manufacturing discussed in Interested Party Comment 16; 8) we have increased Sollac's and GTS's cost of manufacturing to account for increased pig iron cost from an affiliated supplier, thus increasing Usinor's COP and CV. *See* Interested Party Comment 16; 9) we have disallowed Usinor's claimed foreign exchange gains offset to its consolidated financial expense ratio, thus increasing Usinor's financial expense ratio. *See* Interested Party Comment 15; 10) we have used the financial expense information contained in Europipe's financial statements to calculate the further manufacturing financial expense ratio. *See* Interested Party Comment 14; 11) we adjusted Berg's further manufacturing, per-unit movement costs to reflect a per metric-ton value. *See* Interested Party Comment 18; 12) we have deducted home market imputed credit in calculating constructed value; and 13) we have excluded home market inventory carrying cost in calculating constructed value.

Use of Facts Available

In accordance with section 776 of the Act, we have determined that the use of facts available is appropriate for certain portions of our analysis of Usinor's data. For a discussion of our application of facts available, *see* Comments 3, 6, 8, and 10.

Interested Party Comments

Comment 1: Whether the Department Should Include All Additional Berg Charges in Calculating the Firm's Prices

Respondent argues that the Department's preliminary margin calculation erroneously derived the total price for Berg sales by only adding two of the six relevant data fields, the price for base pipe and freight revenue, while omitting the other four additional charges (*i.e.,* ID coating, OD coating, girthweld, and unloading and stockpiling charges). Respondent asserts that its submitted U.S. sales file, like Berg's invoices, lists the base price and all additional charges within separate fields. Therefore, all fields must be summed to reach the total price.

According to respondent, the Memorandum for Holly Kuga from the Team, ''Verification of the Responses of Usinor in the Antidumping Duty Investigation of Certain Cut-To-Length Carbon-Quality Steel Plate From France (Berg Sales)'' (Oct. 22, 1999) (''*Berg Sales Verification Report*'') supports its position. Petitioners did not comment on this issue.

Department's Position: We agree with respondent that it was established at the Berg sales verification that, in determining the total Berg sales price, we should include not only the additional charge for freight revenue, but also the additional coating, girthweld and unloading and stockpiling charges. Based upon our findings at verification, we have included these additional charges in deriving Berg's total sales price for the final determination.

Comment 2: Whether GTS' French-Format and U.S.-Format Financial Statements Reconcile

Respondent notes that, in the normal course of business, GTS prepares both French-and U.S.-format financial statements. Respondent argues that the Memorandum for Holly Kuga from the Team, ''Verification of the Responses of Usinor in the Antidumping Duty Investigation of Certain Cut-To-Length Carbon-Quality Steel Plate From France (GTS, Sollac, and SLPM)'' (Nov. 3, 1999) (''*French Sales Verification Report*'') erroneously states that the GTS U.S.-format does ''not tie to the French-style format in the GTS financial statements.'' According to respondent, the financial statements do reconcile, and further, the financial statements report the same revenue and expenses.

Respondent asserts that the only difference in the two statements is in the presentation of expenses. According to respondent, GTS' French-format financial statements are prepared in accordance with French GAAP, whereby expenses are reported by nature (*e.g.,* salaries, taxes) and are not categorized as cost of sales, commercial expenses or general and administrative expenses. The U.S.-format financial statements, by contrast, are prepared in accordance with U.S. GAAP, which requires the separation of cost of sales, selling expenses, and general and administrative expenses. Petitioners did not comment on this issue.

Department's Position: We agree with respondent. Upon further review of the data on the record, we find that the French and U.S. format financial statements do in fact contain the same information.

Comment 3: Whether Usinor Has Demonstrated That Its Foreign Brokerage and Handling Expenses and Sollac's International Freight Expenses Are at Arm's Length Prices

Respondent asserts that Usinor's affiliated transport companies provided freight forwarding and handling services at arm's length prices. Respondent maintains that, should the Department not agree with this assertion, it should not resort to petitioners' proposal that we use, as facts available, the highest foreign brokerage and handling expense and international freight expense reported by respondent from all U.S. sales. Respondent claims that only a small fraction of the brokerage and handling expense incurred by GTS and international freight expense incurred by Sollac and reported in the relevant fields is related to fees charged by one of these affiliates.

Respondent takes issue with the *French Sales Verification Report* statement that Sollac and GTS failed to provide any evidence, other than the affiliated transport companies' income statements, that the charges for brokerage and handling services and international freight services were at arm's length prices. Respondent maintains this was the only documentary evidence Sollac and GTS could provide, since Usinor did not purchase similar services from unaffiliated companies and the affiliated transport companies do not keep track of data that would allow the calculation of the costs associated with individual shipments.

According to respondent, under the antidumping statute, where an input is purchased from an affiliated party, the Department is to evaluate the price charged by the affiliated party against a market price for that product or service. If the input is a ''major input,'' then the Department is also to evaluate the price charged by the affiliated party for the input against the cost of the input and use the highest of the price from the affiliate, the market price, or the cost of production. *See* Section 773(f)(3) of the Act and 19 CFR § 351.407(b). Respondent argues that, in this case, the affiliated transport companies did not provide the same kind of services to an unaffiliated company that they provided to Sollac or GTS, and Sollac and GTS did not purchase similar services from an unaffiliated company. Consequently, respondent states, it is impossible to make a market price comparison.

Respondent urges the Department to determine that the transfer price was greater than or equal to the cost of the input by examining the affiliated transport companies' financial statements. Specifically, both companies are involved only with export transactions, and work almost exclusively for companies affiliated with Usinor. Thus, according to respondent, the profits listed on the income statements of these two companies are nearly entirely attributable to export work conducted for Usinor and its affiliates. According to respondent, since one company posted a profit for 1998 and the other showed that its income equaled its expenses, their prices are the same or greater than the cost of providing the services.

Respondent argues that in evaluating the prices for inputs in circumstances where no market price is available, the Department routinely uses the higher of the transfer price or cost. Respondent asserts that it is clear that the companies are not absorbing costs and that their prices equal or surpass their costs of providing the services. Hence, respondent concludes that the Department should use the affiliated transport companies' prices in the final determination.

Respondent notes that in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from France,* 64 FR 30,820 (June 8, 1999) (''*SSS&S*''), the Department stated that the ''arm's length test compares prices charged by or paid to affiliated parties with prices which would otherwise be obtained in transactions with unaffiliated parties.'' The Department then found that a profit made on services provided by an affiliated freight forwarder did not prove that the prices for the services were at arm's length, and accordingly rejected the transfer price data. According to respondent, the result in SSS&S should not be followed in this case for three reasons.

First, according to respondent, these affiliated transport companies perform basically all of their freight services for Usinor and its affiliates. Their financial statements establish that the prices charged Usinor are equal to or greater than cost. Second, respondent argues that the rule applied in *SSS&S* is more restrictive than the rule routinely applied by the Department regarding affiliated suppliers of major inputs in cost of production investigations, where the Department takes the highest of the price charged by nonaffiliated suppliers, the transfer price, or the cost. *See* 19 CFR § 351.407(b). The Department should not apply a more stringent proof to suppliers of a minor input (*e.g.*, freight forwarding services), than it applies to suppliers of major inputs. Third, respondents assert that the ruling in *SSS&S* is based upon a case involving entirely different facts. *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Antidumping Duty Administrative Review,* 63 FR 32,833, 32,838 (June 16, 1998) (''*Circular Welded Non-Alloy Steel Pipe*''). In that case, respondent notes, the Department found an affiliated supplier's freight charges were equivalent to the prices charged by unaffiliated suppliers. The Department accordingly rejected evidence that the affiliate did not always charge a markup when it arranged for third-party supply. In other words, respondents claim, the Department said that once it had evidence establishing a market-price benchmark (the best evidence that the transaction occurred at a market price), proof of the affiliate's profitability (the second best evidence) was irrelevant. Respondent argues that the Department's statement that it will not allow evidence of profitability to overcome market price information does not mean, however, that the Department cannot rely on profitability when no market price evidence exists.

Petitioners argue that there is no record evidence to support respondent's claim that its affiliates provided freight-forwarding and handling services at arm's length prices. Petitioners argue that respondent's suggestion that the Department determine that the transfer price was greater than or equal to the cost of the input by examining the affiliates' financial statements is incorrect. According to petitioners, Usinor fails to articulate how the Department could utilize the affiliates' financial statements to determine that the transfer price was greater than or equal to the cost of the input. Further, petitioners contend that the affiliates' financial statements are not a valid source for the arm's length test because one affiliate in a few instances performed some services for unaffiliated companies, indicating that profits may have been derived from transactions with the unaffiliated parties.

Petitioners state the fact that the affiliates may have been profitable overall is irrelevant to whether they charged arm's length prices for foreign brokerage and handling services to a specific entity because they may have been charging preferential rates to GTS and Sollac while earning greater profits on sales to other customers or on sales of non-subject merchandise. Moreover, according to petitioners, even if the affiliate earned a profit for services provided to GTS and Sollac with respect to the subject merchandise, this does not mean it charged arm's length prices for these sales. What is relevant, petitioners state, is whether the profit earned is as large as the profit earned on sales to other customers or for other products. Thus, petitioners conclude, Usinor has failed to demonstrate that it paid arm's length prices for this service. Petitioners suggest applying the highest brokerage and handling expense reported by Usinor in the foreign brokerage and handling field to all U.S. sales.

Petitioners further state that Usinor also failed to demonstrate that international freight expenses incurred for Sollac's U.S. sales were at arm's length. Petitioners argue that because Usinor failed to demonstrate that it reported arm's length prices for Sollac international freight expenses, the Department should apply, as facts available for all U.S. sales, the highest international freight expenses reported by Usinor.

Department's Position: We agree with petitioners in part. As in *SSS&S*, it is clear from the record evidence that Usinor was unable to demonstrate that its affiliated freight forwarder rates (brokerage and handling) were at arm's length prices. We disagree with respondent's argument that a profit made on the services the affiliated freight forwarders provided to GTS and Sollac proves that these services were at arm's length. The arm's length test for services between affiliated parties compares prices charged by or paid to affiliated parties with prices which would otherwise be obtained in transactions with unaffiliated parties. *See Circular Welded Non-Alloy Steel Pipe.* The level of profit on these services is not a relevant consideration.

However, we disagree with petitioners' contention that adverse facts available should be utilized. In accordance with Section 776(b) of the Act, Usinor acted to the best of its ability to prove that these transactions were at arm's length. Specifically, the affiliated transport companies did not provide the same kind of services to an unaffiliated company that they provided to Sollac or GTS, and Sollac and GTS did not purchase similar services from an unaffiliated company. Thus, at verification Usinor provided us with the only information available with respect to the issue of brokerage and handling cost.

Usinor's attempt, therefore, to prove the arm's length nature of these transactions by supplying the affiliates' income statements, in light of the lack of any other information, constitutes a reasonable attempt to cooperate with the Department's requests. Because Usinor cooperated fully, but was unable to provide the requested information in the exact manner requested, adverse facts available is an inappropriate basis on which to calculate this adjustment. Because we find that Usinor has acted to the best of its ability with respect to this adjustment, and because there are no unaffiliated transactions that we can utilize as facts available, we have used Usinor's domestic brokerage and handling expense as reported. Finally, we note that for international freight expenses, the record does contain expenses from unaffiliated parties. Because Usinor's international freight expenses from affiliated parties were less than such expenses from unaffiliated parties, as non-adverse facts available for affiliated transactions we have used the average of the unaffiliated international freight expenses.

Comment 4: Whether Usinor Has Adequately Demonstrated Differences in Levels of Trade (''LOT'')

Petitioners note that in the preliminary determination, the Department identified two LOTs in France, one comprised of sales by GTS and Sollac, and a second comprised of sales by SLPM. The Department found that the LOT of the U.S. sales differed from both of these because Usinor claimed that it performed fewer selling activities for U.S. sales than for home market sales at either level. Petitioners state that at verification, the Department found that it could not verify Usinor's LOT representations, and accordingly should reject Usinor's claim for a CEP offset based on different LOTs.

Petitioners quote from the *French Sales Verification Report* in regard to GTS: ''Company officials explained the information included in the [LOT] chart submitted to the Department and provided no supporting documentation.'' Petitioners quote from the French Sales Verification Report in regard to Sollac: ''Included in the list of corrections * * * are minor revisions to the [LOT] chart most recently submitted to the Department. Company officials explained the information included in the [LOT] chart and provided no supporting documentation.'' Petitioners argue that, as the Department was unable to verify Usinor's information submitted with regard to GTS and Sollac, there is no basis upon which to presume that home market LOT one is distinct from the U.S. LOT. Petitioners next state that the Department also has no basis upon which to conclude that Usinor's second home market LOT, which involves sales by SLPM, is distinct from the U.S. LOT, because the Department could not verify SLPM's warehousing expenses and its indirect selling expenses and selling activities (two of the activities which led to the preliminary LOT determination.)

Respondent states that, as requested by the Department, Usinor provided comprehensive charts detailing the various activities performed by the various companies in each market, including the degree to which each function was performed. Respondent argues that these LOT charts reveal that Sollac and GTS conduct more selling activities, and to a greater degree, in France than they do in the United States because the U.S. companies are fully engaged in the selling effort and perform themselves the selling functions that the French companies undertake at home. Respondent reiterates Usinor's statements from its initial questionnaire response that: ''Sales in the respective markets are at different [LOTs]—to end users and service centers in France, and to a super-distributor, Francosteel, and an affiliated pipe producer, Berg, in the United States. As such, all sales made by Sollac and GTS in France are at a different [LOT], representing a more advanced stage of distribution [than that for U.S. sales]. In the United States, Francosteel and Berg effectively relieve Sollac and GTS, as applicable, of virtually all of the selling functions that they bear in connection with their home market sales.''

Respondent argues that the mode of analysis undertaken by the Department in evaluating LOTs, as reflected in its July 19, 1999, *LOT/CEP Memorandum* and the *Preliminary Determination,* was proper and in accordance with the requirements of the law. Respondent argues that nothing in the *French Sales Verification Report* raises any question about the Department's preliminary determination that a CEP offset was appropriate. Respondent argues that the *French Sales Verification Report* does not state that the LOT charts failed to verify, rather, it stated that respondent did not provide any additional new documentary evidence at verification on LOT. In fact, respondent contends, the record contains myriad evidence, verified by the Department, demonstrating from every possible angle the differences in selling activities conducted in selling to France versus those for selling to the United States.

Respondent contends that Sollac Vente France's (SVF)'s and SLPM's activities, which are conducted solely for sales in France, demonstrate that a CEP offset is warranted. Respondent asserts that it has submitted copious data supporting SVF's activities, including French sales traces demonstrating SVF involvement, a list of SVF's eleven sales offices, and a certified response elaborating its role in the sales process. Respondent states that a comparison of the home market and U.S. sales traces exhibits that SVF does not conduct any activities regarding sales to or in the United States. For SLPM sales, both SVF and SLPM provide services, drawing into even starker relief the differences in the selling activities for France vis-a-vis CEP sales to Francosteel and Berg for the U.S. market.

According to respondent, further confirmation of the significant differences in selling activities for respondent's sales in France compared with its sales to the United States is provided by the verified selling expenses provided in respondent'' computer files. Respondent states that the average level of expenses for sales in the home market is anywhere from 50 to 1200 percent higher than for sales to the United States.

Respondent argues that the Department was able to orally verify the LOT charts with the company officials who, by virtue of their daily involvement in CTL plate sales, are intimately aware of the degree of selling activities conducted in each country. According to respondent, the charts were put together by the companies after lengthy consultations with personnel who have direct, day-to-day involvement in the sale of CTL plate in the United States and France, and many of these same people were present and available for questioning by the Department at verification.

Respondent further asserts that a CEP offset to reflect the demonstrated differences in selling activities is warranted in this case. Respondent states that it provided complete and accurate data regarding the level of selling activities conducted in each country, including: information regarding the extensive selling activities of Sollac, GTS, SVF, and SLPM in France and the substantially less or non-existent selling activities of those companies for sales to the United States, including sales traces revealing these differences, addresses of SVF's commercial offices in France and the lack of such offices in the United States, addresses and maps of SLPM's commercial offices and warehouses in France and the lack of such offices in the United States, verified information regarding warehousing expenses, warranty expenses, indirect selling expenses, commission expense and inventory carrying cost incurred for sales in France and for the United States, and complete access to personnel at all companies who could confirm the differences in selling activities.

Department's Position: We disagree with petitioners that Usinor's CEP offset should be denied. In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A and profit. For CEP sales, the Department makes its analysis at the level of the constructed export sale from the exporter to the affiliated importer.

Because of the statutory mandate to take LOT differences into consideration, the Department is required to conduct a LOT analysis in every case, regardless of whether or not a respondent has requested a LOT adjustment or a CEP offset for a given group of sales. To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the LOTs between the NV and the CEP sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR at 61731.

In the *Preliminary Determination,* the Department made a CEP offset adjustment to the normal values that were compared to CEP sales in the United States, because the Department preliminarily found that all of Usinor's home market sales were made at LOTs different from and more advanced than the LOT of Usinor's CEP sales in the United States, and there was no basis for determining whether the differences in the LOTs between the NV and the CEP sales affects price comparability. *See LOT/CEP Memorandum,* dated July 19, 1999. In particular, the Department found that Usinor performed fewer and different selling functions in connection with its CEP sales than in connection with home market sales to its unaffiliated customers. Further, the Department found that it was not possible to quantify a LOT adjustment based on the available data. The fact that Usinor identified a slightly different LOT pattern at verification than it had in its questionnaire response is not determinative. As explained above, the Department conducts its own LOT analysis, rather than merely accepting the assertions of the parties. The Department is satisfied that it has sufficient reliable information to reach a decision as to the LOTs at which Usinor and its affiliates sell subject merchandise. Furthermore, the Department verified the data used in making this analysis. *See* the *French Sales Verification Report,* which notes that we reviewed the LOT charts with company officials, and substantiated the claimed LOT differences through documentation such as that collected in the sample sales traces and verification exhibits related to the relevant expenses. Although we disagree with respondent's assertion that SVF's and SLPM's lack of commercial offices in the United States is relevant, after further examination of the relevant information on the record, the Department has continued to make a CEP offset because the facts on the record indicate that Usinor's CEP LOT is different from and less advanced than Usinor's home market LOTs, and that the data of record do not permit it to, instead, make a LOT adjustment based on the effect of the LOT difference on price comparability.

Comment 5: Whether Usinor Has Failed To Provide Accurate Inventory Carrying Cost Information for Sollac Home Market Sales

Petitioners argue that the inventory carrying cost information Usinor has reported for Sollac sales does not reflect the inventory experience of Sollac for the entire period of investigation, but rather ignores seventeen percent of the period. Petitioners quote from the *French Sales Verification Report:* ''Sollac utilized the daily inventory balance during the period March 9 through Dec. 31, 1998, because, according to company officials, Sollac no longer had the information for the first two months of the year in their system to cover the entire POI.'' Petitioners state that the Department should not deem this information accurate or representative, and, accordingly, should not include Sollac's reported inventory carrying costs as part of that adjustment.

Respondent contends that the Department verified the accuracy of the information used to calculate Sollac's average number of days between production and shipment for the March 9, 1998 through December 31, 1998 period. Respondent states that the earliest date for which Sollac's database had detailed inventory movement data was March 9, 1998, and that its method of calculating average inventory days is more precise than the general method.

Respondent contends that the general method used by accountants to calculate annual average inventory days or turnover is by dividing the average of beginning and ending inventory balances by average daily shipments or costs of goods sold during the year. So, according to respondent, the general method is based upon only two observations.

On the other hand, for each shipment of plate to a customer in France during the period from March 9, 1998 through December 31, 1998, Sollac calculated the actual number of days between the date when the plate entered finished or semi-finished goods inventory and the date when the plate was shipped to the customer. Thus, according to respondent, Sollac's calculation was based on 291 observations rather than the two observations that is the norm for this calculation. Further, respondent argues, Sollac calculated its average inventory days specific to the subject merchandise, not on a larger product group as is typically the case. Respondent asserts that Sollac's calculation is more representative than the data typically prepared by companies, and accordingly, the

Department should reject petitioners' request that the Department not include Sollac's inventory carrying costs.

Department's Position: We agree with respondent. We verified the accuracy of the information used to calculate Sollac's average number of days between production and shipment for the March 9, 1998 through December 31, 1998 period, and find this period to be an accurate representation of the POI for purposes of tracking inventory movement. We found that respondent's explanation for the absence of inventory information for the first two months of the POI was reasonable, and noted no discrepancies in tracing the relevant information through Sollac's books and records. *See* the *French Sales Verification Report.*

Comment 6: Whether Usinor Accurately Reported Indirect Selling Expenses for SLPM's Home Market Sales

Petitioners argue that Usinor's reported indirect selling expenses for SLPM's home market sales are deficient, and thus the Department should not include this information in the adjustment to normal value. Petitioners cite to the SLPM Indirect Selling Expense section of the *French Sales Verification Report* in support of their above contention.

Respondent argues that the Department verified the accuracy of SLPM's indirect selling expenses. Respondent first states that the discrepancy cited by petitioners that its receivables insurance was inadvertently included in the calculation of indirect selling expenses is clearly immaterial and was well known to the Department. Respondent next disagrees with petitioners' arguments regarding SLPM's allocation of costs by function. Respondent asserts that SLPM maintains its costs by nature, which is in accordance with French GAAP (*note,* an example of maintenance of cost ''by nature'' as distinguishable from costs ''by function'' would be tracking total electricity costs rather than electricity usage by process or factory.) Further, respondent asserts, SLPM's submitted cost worksheet allocated its costs by nature into the form requested by the Department and accounts for all costs.

According to respondent, the Department verified that the costs reported tied to SLPM's 1998 income statement and general ledger, then requested that SLPM demonstrate the basis for its allocations of these costs among functions. Respondent states that SLPM provided detailed worksheets for electricity and the other allocations specifically reviewed by the Department, and SLPM's controller and financial director explained how he used his knowledge of the company to make the allocation judgements. Respondent argues that petitioners do not question whether all of SLPM's costs and expenses were properly reported to the Department, but rather whether they were properly allocated. According to respondent, petitioners point to no contrary record evidence to buttress their claim that the allocation is incorrect and to warrant the Department rejecting SLPM's indirect selling expenses.

Department's Position: We agree with petitioners. As noted in the *French Sales Verification Report,* SLPM provided no documentation to support its estimated allocations used to determine the costs included in its reported indirect selling expenses. We disagree with respondent's contention that SLPM provided detailed worksheets for electricity and the other allocations specifically reviewed by the verifiers. The worksheets provided by respondent at verification merely listed the estimates used to derive SLPM's allocations, and did not offer any supporting documentation on how those estimates were derived.

In conducting verification the burden is on respondents to demonstrate that the information in their questionnaire response is complete and accurate. While the verifier asks different questions and employs different methods to evaluate the reported expenses, it is respondents who have the most complete knowledge of available information sources, who must devise a way of demonstrating the accuracy and completeness of their reported data. For indirect selling expenses, which by their very nature are general expenses that must be allocated over relevant sales, it is sometimes difficult to allocate expenses in a precise manner. Nevertheless, some reasonable and consistent method has to be developed which can be tested and evaluated at verification. In the instant case, respondent did not provide a reasonable or consistent basis for the reported expense, but merely estimated the relevant amount. We are unable to accept respondent's estimates without some basis for critically evaluating whether they are reasonable at verification. Accordingly, we have disregarded SLPM's reported home market indirect selling expenses.

Comment 7: Whether Usinor Accurately Provided Warehousing Expense Information for Sollac's Home Market Sales to SLPM

Petitioners argue that Usinor did not provide verifiable warehouse expense information for Sollac's home market sales. Petitioners cite to the *French Sales Verification Report:* ''to support its per metric ton warehouse expense amount, SLPM provided a computer screen print which, according to company officials, cannot be linked to SLPM's accounting system . . . SLPM informed us that warehousing information is entered when received and does not connect to any other information or accounting system.'' Petitioners claim that, as this expense could not be tied to SLPM's accounting system, the Department has no way of ensuring the accuracy of the reported expenses, and thus should not include Sollac's warehousing expense in the adjustment to normal value for all SLPM sales.

Respondent disagrees with petitioners' contention that SLPM's warehousing costs should not be included as an adjustment to normal value because SLPM could not link the tons warehoused to its accounting systems. Respondent maintains that accounting systems track revenue and costs rather than tonnage, so it is understandable that the tons warehoused were not mentioned in SLPM's accounting system. Respondent asserts that SLPM appropriately provided the Department with a query of its inventory database that tracked the number of tons shipped from its warehouses. Respondent argues that the Department verified that this database is maintained in the normal course of business, and that SLPM accurately reported its per-unit cost of warehousing.

Department's Position: We agree with respondent. We verified that SLPM's inventory database is maintained in the normal course of business, and traced the relevant information from this database to SLPM's calculated per-unit cost of warehousing as reported to the Department.

Comment 8: Whether Usinor Provided Accurate Home Market Packing Costs for SLPM Sales

Petitioners claim that the *French Sales Verification Report* indicates that the packing expenses reported with respect to SLPM sales do not pertain to the POI. Petitioners quote from the *French Sales Verification Report,* ''SLPM acknowledged that its packing costs were based on May 1998 estimated costs for which it could not provide detailed specifications.'' Petitioners argue that, as these reported amounts were estimated and do not pertain to, and thus cannot be linked to, sales made during the POI, the Department should deny Usinor's claimed home market packing expense adjustment for all SLPM sales.

Respondent disagrees with petitioners' contention that the Department should deny Usinor's claimed home market packing expense adjustment for all SLPM sales. Respondent states that petitioners' cite from the *French Sales Verification Report* only refers to a small amount of SLPM's sales, those which are not further processed. Respondent states that, when SLPM ships product in the same form as received from the manufacturer, it assigns a Franc per ton charge to the shipment. Respondent argues that this charge represents a reasonable estimate of SLPM's handling costs that it has used for its own internal accounting purposes in the normal course of business. Respondent argues that, for the other SLPM sales, it provided detailed support for its calculated packing costs at verification and met its burden of demonstrating that these expenses were properly reported.

Department's Position: We agree with petitioners. Each pre-selected sales invoice reviewed and discussed in the *French Sales Verification Report* involving SLPM indicated that the subject merchandise was not further processed by SLPM. The packing type for subject merchandise that was not further processed by SLPM is that for which SLPM was unable to substantiate its estimated packing cost. *See French Sales Verification Report* at page 37, where we noted that ''SLPM acknowledged that its packing costs were based on May 1998 estimated costs for which it could not provide detailed specifications.'' With respect to the packing types SLPM utilized when it further processed the subject merchandise, notwithstanding respondent's claim that it ''calculated packing costs in detail and provided support for its calculation,'' the respondent provided no documentation on the record to support its cost breakdown (listed in SLPM verification exhibit 13). We have thus denied Usinor's claimed home market packing expense adjustment for all SLPM sales.

Comment 9: Whether Sales of Certain Merchandise Should Be Reclassified as Non-Prime Sales

Petitioners argue that the Department treated sales of certain merchandise as prime merchandise in the preliminary determination when, in fact, Usinor has stated that such merchandise is non-prime. Petitioners note that Usinor has stated ''GTS guarantees neither the grade nor the length of this merchandise; it only guarantees thickness,'' and that the *French Sales Verification Report* confirmed this assertion. Petitioners assert that this merchandise is non-prime material that is priced differently from other CTL plate sold in the home market, and thus should be treated as non-prime sales in the final determination.

Respondent contends that the Department should not alter its Preliminary Determination with respect to this merchandise. Respondent argues that the only difference between this merchandise and full prime merchandise is the possibility of changes in the mechanical properties of the slab over the six-month waiting period. This merchandise, according to respondent, is superior to non-prime merchandise because it is warranted except for grade, while non-prime is not warranted at all. Respondent argues that it would be distortive to treat this merchandise as non-prime merchandise because it is much closer in characteristics and price to the prime merchandise sold by GTS.

Department's Position: We agree with respondent that it would be distortive to treat this merchandise as non-prime. We have stated, in *Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil* 64 FR 38756 (July 19, 1999) (*''Hot-Rolled Steel from Brazil''*), that ''to determine if sales or transactions are outside the ordinary course of trade, the Department evaluates all of the circumstances particular to the sales in question. Examples of sales that we might consider outside the ordinary course of trade are sales involving off-quality merchandise or merchandise produced according to unusual product specifications, merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm's length price. See 19 CFR 351.102.''

In this case, the CTL plate described above is not defective in any way, but is merely prime plate that has been in inventory for a period long enough to possibly alter some mechanical properties of the merchandise. *See French Sales Verification Report* at page 3. Although the existence of such differences is speculative, in the interest of full disclosure, respondent identifies this merchandise to customers. However, we found no evidence at verification that customers actually treat this merchandise any differently from full prime merchandise. Thus, unlike that discussed in *Hot-Rolled Steel from Brazil,* these products are not off-quality merchandise, and therefore the sales may be considered within the ordinary course of trade. As such, we have continued to treat this plate as prime merchandise for purposes of the final determination.

Comment 10: Whether Usinor Has Provided Complete Information on Product Specifications

Petitioners argue that the model matching hierarchies provided by Usinor for two of its U.S. CTL plate specifications do not indicate identical home market matches, when in fact Usinor sold merchandise with these exact specifications in its home market. *See Final Calculation Memo,* dated December 13, 1999, for a description of these proprietary specifications. Petitioners assert that the Department should revise its model match program to permit identical matches between these U.S. and home market specifications.

Respondent contends that petitioners' argument in this regard is simply incorrect, and that for these two U.S. CTL plate specifications, the identical home market specification was sold in the home market and has been identified.

Department's Position: We agree with respondent that it provided accurate supplemental model-matching information in its May 25, 1999, submission. Usinor identified the identical home market specification for both of these U.S. specifications in its submission. Therefore, for the final determination, we have matched the relevant U.S. sales to home market sales with identical specifications.

Comment 11: Whether Usinor Failed to Report Inland Freight Expenses That Were Incurred for Numerous U.S. Sales

Petitioners assert that for numerous U.S. sales with reported sales terms that indicate inland freight expenses, Usinor failed to report freight expense. Petitioners argue that, as facts available, the Department should deduct the highest reported freight charge from each of these transactions.

Respondent maintains that these sales were correctly reported as incurring no freight expenses. According to respondent, the Department specifically reviewed a transaction at the Francosteel sales verification where the sales terms were reported as delivered but the freight expense was zero, and verified that the zero freight expense was correct. Respondent further argues that the other fields in the Berg and Francosteel records corroborate that no U.S. freight expense was incurred.

Department's Position: We agree with respondent. Item 5 of Francosteel verification exhibit 1 (list of corrections) from the ''Verification of the Responses of Usinor in the Antidumping Duty Investigation of Certain Cut-To-Length Carbon-Quality Steel Plate From France (Francosteel Sales)'' (Oct. 22, 1999) (''*Francosteel Sales Verification Report*'') contains the list of invoices in which Francosteel incorrectly labeled the delivery terms ''delivered'' in its previous sales databases. We verified specific invoice items from this list and found that Francosteel incurred no freight expense for these invoices. Further, we noted no discrepancies at the Berg sales verification when verifying Berg's freight adjustment factor for its U.S. inland freight expense.

Comment 12: Whether Usinor Has Failed To Report Warehousing Expenses for Sales by Berg

Petitioners assert that Usinor's supplemental questionnaire responses indicate that Berg incurred warehousing expenses on U.S. sales because Usinor did not address the Department's request that it explain the apparent contradiction between a statement Usinor had made ''which implies warehousing expenses were sometimes incurred in the United States.'' Petitioners argue that the Department should apply facts available to account for possible unreported warehousing expense for all Berg sales. Petitioners suggest that the Department apply as facts available the highest reported warehousing expense reported in the home market.

Respondent maintains that petitioners are incorrect in implying that there are possible unreported warehousing expenses for Berg sales. Respondent states that Berg, as it stated in its initial questionnaire response and as the Department verified, never incurred such warehouse expense.

Department's Position: We agree with respondent. We found no evidence of unreported warehousing expenses at the Berg sales verification, and have therefore utilized Berg's reported expenses. *See Berg Sales Verification Report* at sections Accounting Overview and Reconciliations, Sales Process, U.S. Sales Transactions, and the various expenses, where no evidence of unreported expenses are noted.

Comment 13: Whether the Department Should Reject Usinor's Most Recent Dataset

Petitioners argue that a comparison of Usinor's August 23, 1999, data submission and its most recent, November 10, 1999, data submission reveals that Usinor made a number of changes to its datasets which the company fails to acknowledge in its November 10 memorandum. Petitioners cite the following unacknowledged changes: (1) The number of home market sales transactions increased; (2) the mean gross unit price for U.S. sales increased for numerous customers; (3) the mean value for domestic brokerage and handling for U.S. sales decreased for numerous customers; and (4) the mean value for international freight for U.S. sales decreased for numerous customers. Petitioners argue that, because Usinor has made these unexplained and apparently unauthorized changes to its data, the Department should utilize the August 23, 1999 data submission for the final determination.

Respondent argues that petitioners' list of ''unacknowledged and unauthorized'' changes to the U.S. and home market sales files submitted on November 10, 1999 in fact were discussed in respondent's minor corrections filings and presented to the Department on the first day of each verification. Respondent states that in the letter that accompanied the files in the November 10 post-verification submission, it incorporated by reference the minor corrections and verification exhibits that described these corrections in detail.

Department's Position: We agree with respondent that in the letter that accompanied the files in the November 10, post-verification submission, it incorporated by reference the minor corrections and verification exhibits that described these corrections in detail. At verification we accepted these minor corrections, and accordingly, we utilized Usinor's most recently submitted data for the final determination.

Comment 14: Calculation of Further Manufacturer's Financial Expense Ratio

Usinor first argues that the Department should not use Europipe Gmbh's (''Europipe'') (*i.e.,* Berg's parent) financial expense ratio to calculate Berg's further manufacturing financial expense. Instead, Usinor believes that Dillinger Hutte's (''Dillinger'') financial expense ratio should be used because this company is the ultimate parent of both Berg and Europipe. However, if the Department does determine that Europipe's financial expense ratio should be used for the final determination, Usinor requests that the Department make certain corrections to the calculation of the ratio. First, Usinor claims that Europipe's financial expenses should be offset by short-term interest income. According to Usinor, the Department normally allows such offsets, and cites to the *Final Determination of Sales at Less than Fair Value: Stainless Steel and Strip in Coils from the United Kingdom,* 64 FR 30688, 30710 (June 8, 1999) to support its claim. Second, Usinor recommends that the Department include Europipe's product specific research and development (''R&D'') expenses in the calculation of denominator (*i.e.,* cost of goods sold) that the Department uses to determine the financial expense ratio. Although Europipe records this expense as a separate line item on the income statement, Usinor notes that the Department should consider it as a cost of manufacturing because the expense is product-specific. According to Usinor, the Department normally considers product-specific R&D as a component of cost of goods, citing *Final Results of Administrative Review; Static Random Access Memory Semiconductors from the Republic of Korea,* 63 FR 8934, 8939 (February 23, 1998) to support its claim.

In contrast, petitioners do not take issue with the use of Europipe's financial expense ratio to calculate Berg's further manufacturing financial expense. As for the calculation of the financial expense ratio, the petitioners believe that Usinor's suggested changes would misstate the financial expense of Berg. Petitioners also assert that Usinor has not met the burden of proof in supporting its claim for either adjustment. Specifically, petitioners claim that Europipe's financial expense should not be altered because Usinor has not shown that this income was in fact short-term interest income. Likewise, the petitioners state that Usinor has not demonstrated that Europipe's R&D expenses were product-specific. According to petitioners, the Department considers product-specific or process-specific R&D as a cost of manufacturing only if the benefits of the R&D relate to a single product; otherwise, the R&D is considered a G&A expense. *See e.g., Negative Final Determination of Circumvention of Antidumping Duty Order; Portable Electric Typewriters from Japan;* 56 FR 58031, 58040 (November 15, 1991). In addition, the petitioners note that Europipe's income statement did not classify its R&D as a manufacturing expense. For these reasons, the petitioners claim that the Department should not adjust the calculation.

Department's Position: We disagree with respondent that we should not use Europipe's financial expense ratio to calculate Berg's further manufacturing financial expenses. In the instant case, Europipe is the parent company of Berg. Europipe, in turn, is a joint venture owned by Dillinger (a Usinor affiliate) and another company. Berg calculated its financial expense ratio based on the information contained in the consolidated financial statements of Dillinger. However, we note that Dillinger includes neither Berg's nor Europipe's financial results in its consolidated financial statements. Thus, Europipe's financial statement is the highest level of consolidation available. As such, we have relied on the information contained in Europipe's consolidated statements to calculate the financial expense ratio. This method is consistent with our normal practice. *See Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire From Canada,* 64 FR 17324–17336 (April 9, 1999) (the Department relied on the amounts reported in the consolidated financial statements of the highest level available to calculate the financial expense ratio); *Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from France,* 64 FR 30820, 30842–43 (June 8, 1999) (where the Department agreed with Usinor that it was appropriate to use the highest consolidation level available to calculate the financial expense ratio.)

We also disagree with Usinor's suggestion that we make certain corrections to the calculation of Europipe's financial expense ratio. Specifically, we have not allowed an offset for interest income because Usinor did not provide any evidence to substantiate that the amount it claimed as an offset is short-term interest income. Moreover, Europipe's audited financial statements did not report any breakdown of long- vs. short-term investments or interest income. Consistent with our past practice, we have disallowed Europipe's claimed short-term interest income offset in the financial expense calculation where respondents have not substantiated their claim. *See, e.g., Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part: Silicon Metal From Brazil,* 64 FR 6305, 6313 (February 9, 1999), where the Department disallowed the short-term offset because of lack of supporting evidence.

In addition, we disagree with Usinor that R&D expenses should be included in the denominator (*i.e.,* cost of sales) used in calculating the financial expense ratio. In the instant investigation, we did not include Europipe's R&D expenses in the denominator used to calculate the financial expense ratio because Usinor did not provide evidence to substantiate that its R&D is a cost of manufacturing. We note that the only information on the record that identifies the nature of Europipe's R&D is a footnote in the company's financial statement. However, this footnote only provides a generic description of the expense and it does not identify the R&D as product-specific. In addition, we note that Europipe's income statement classifies this expense as a period cost (similar to general expenses) rather than a component of its cost of goods sold. Thus, we have found that Europipe's R&D expense is not a product-specific cost of manufacturing. This determination is consistent with our determination in the *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, 2112 (January 15, 1997) (the Department treated R&D as a G&A expense because respondent did not provide information indicating that the R&D relates to a specific product). For the final determination, we have not included Europipe's expense as part of the cost of goods sold for purposes of calculating the financial expense.

Comment 15: Offsetting Financial Expenses with Net Foreign Exchange Gains

Usinor argues that the Department should include its net foreign exchange gains in the calculation of its financial expenses. Usinor admits that it could not identify the various components of this gain because it does not have the necessary information to identify specific foreign currency gains or losses as having arisen from transactions involving accounts receivable, loans receivable, accounts payable, loans payable, other sources, *etc.* This information, according to Usinor, could not be provided because the company is made up of more than thirty companies and does not separately track the foreign currency transactions conducted for each of these companies. Thus, Usinor argues that it should not be punished for failing to provide data that it does not have. Moreover, Usinor claims that section 773(f)(1)(A) of the Act provides that the Department will calculate costs based on the producer's records if such records are kept in accordance with GAAP in the producer's home market and reasonably reflect the costs associated with production and sale of the merchandise. According to Usinor, its financial statements are prepared in accordance with French GAAP and, as such, reasonably reflect costs incurred by the company, including those costs related to foreign exchange gains and losses.

Petitioners counter that the Department should disallow Usinor's net foreign exchange gains from the calculation of financial expenses. According to petitioners, Usinor has not demonstrated that its net exchange gains resulted from short-term investments or that the gain excludes amounts related to accounts receivables. According to petitioners, the Department requires that respondents provide this distinction, citing to *Final Determination of Sales at less than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan,* 64 FR 24329, 24350 (May 6, 1999) (''it is the Department's normal practice to distinguish between foreign exchange gains and losses from other types of transactions''). Petitioners additionally argue that Usinor does have the information necessary to segregate the gains related to specific transactions. Thus, petitioners claim that if Usinor's claimed offset is allowed, the Department would reward Usinor for failing to provide data that was available. According to petitioners, these type of gains and losses normally arise on a transaction-specific basis. Therefore, even if Usinor does not have the information at the consolidated level, the petitioners claim the subsidiaries would have it. The petitioners further note that disallowing this offset does not ''punish'' Usinor, as Usinor claims, but simply adopts a reasonable adverse inference from Usinor's refusal to provide information the company has the ability to produce.

Department's Position: We agree with the petitioner that we should not include Usinor's net foreign exchange gains in the calculation of its financial expenses. To calculate its reported financial expense, Usinor offset its financial expenses with the total net foreign exchange gains realized on all transactions. However, Usinor was unable to demonstrate the source of these consolidated foreign exchange gains and losses. Thus, contrary to our normal practice, Usinor did not distinguish between exchange gains and losses realized or incurred in connection with sales transactions and those associated with purchase transactions. Specifically, our normal practice is to include a portion of these foreign-exchange gains and losses in the calculation of COP and CV. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Trinidad and Tobago,* 63 FR 9177, 9181 (February 24, 1998) (*Steel Wire Rod from Trinidad and Tobago*). We normally include in the calculation of COP and CV the foreign-exchange gains and losses that result from transactions related to a company's manufacturing activities. We do not consider exchange gains and losses from sales transactions to be related to the manufacturing activities of the company. *See, e.g., Steel Wire Rod from Trinidad and Tobago and Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile,* 63 FR 31411, 31430 (June 9,1998).

In addition, we disagree with Usinor's position that this issue involves or questions the respondent's use of generally accepted accounting principles (''GAAP''). The issue at hand involves the fact that Usinor has not shown that the components of this foreign exchange gain are associated with manufacturing activities of the company.

We agree with petitioners that respondent has the burden of proof to demonstrate, substantiate and document this type of adjustment. *See e.g., Timken Company* v. *United States,* 673 F. Supp. 495, 513 (CIT 1987); and *Final Results of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker from Japan;* 60 FR 43761, 43767 (August 23, 1995); *see* also 19 CFR § 351.401(b)(1) of our regulations.

Comment 16: Calculation of Depreciation Expense

Usinor claims that it properly excluded the stepped-up basis of an affiliate supplier's depreciation expense in calculating the cost of producing pig iron obtained from an affiliate. According to Usinor, the affiliate is merely a wholly owned subsidiary that was created to hold the production assets used by the Usinor organization in manufacturing pig iron. Usinor asserts that this subsidiary does not actually manufacture or produce pig iron because it is just an accounting entity that exists for tax purposes. Since the transfer of the ownership of the assets had only a tax effect, Usinor believes it is appropriate to exclude the additional depreciation expense associated with the stepped-up basis. Thus, Usinor claims that the Department should rely on the depreciation expense as recorded in Usinor's consolidated financial statements that exclude the adjustment. Petitioners did not comment on this issue.

Department's Position: We disagree with Usinor that the depreciation expense associated with its affiliate's revaluation of assets (*i.e.*, ''stepped-up basis'') should be excluded from the calculation of COP. Specifically, Usinor obtained pig iron from an affiliate company and reported the affiliate's cost of production. In calculating the affiliate's cost of production, Usinor did not include the depreciation expense reported in the company's normal books and records. Instead, Usinor included a depreciation expense figure based on its historical cost of the assets. Our normal practice, however, is to rely on the depreciation expense recorded in the normal accounting records. *See, e.g., Cinsa S.A. de C.V.* v. *United States,* 966 F. Supp 1230, 1234 (CIT 1997) (upholding the Department's reliance on depreciation expense reported on the financial statements); *Laclede Steel Co.* v. *United States,* 965 Slip OP 94–160, *24 (CIT 1994) (upholding the Departments reliance on depreciation expense reported on the financial statements); *see also Final Results of Administrative Review: Silicon Metal from Brazil,* 64 FR, 6305, 6321 (February 9, 1999).

Contrary to Usinor's argument, we also do not find it appropriate to rely on the depreciation expense of the affiliated supplier as calculated at the consolidated level because it would circumvent the major-input rule. *See,* sections 773(f)(2) and (3)of the Act. Here, the affiliated company in question is a separate legal entity in France that maintains its own books and records. Consistent with prior determinations, we find that the legal form dictates whether we should use that affiliate's production costs as reported in its books and records. *See, e.g., Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Italy,* 64 FR 6615, 6622 (February 10, 1999) (the Department treated an affiliated supplier as a separate entity for reporting costs because of its legal form). Therefore, we have adjusted the cost of pig iron to reflect the affiliate's cost of production in accordance with section 773(f)(3) of the Act.

Comment 17: Calculation of Reported Costs

Petitioners allege that Usinor uses a standard cost accounting system but refused to provide variances to the Department. According to petitioners, Usinor's failure to provide a variance between its standard and actual costs means that the Department cannot use the reported CONNUM-specific standard costs. Without this variance, the petitioners continue that the Department has no assurance that Usinor has accurately reported product-specific costs. Moreover, petitioners claim that Usinor has consistently refused to provide this information. Therefore, petitioners believe that the Department should reject Usinor's cost data and resort to the use of facts available as it has done in similar situations in the past, citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Indonesia,* 63 FR 72,268, 72,276 (December 31, 1998).

Petitioners further counter Usinor's explanation that a variance is not necessary in this case because it used actual costs; according to petitioners, Usinor has stated both that it had reported actual product specific costs and that the product specific costs are based on standards. Thus, petitioners claim that Usinor is obliged to provide variances because the statute requires that COP and CV be based on the producer's actual costs. In addition, the petitioners discount the importance of Usinor's claim that its total aggregate extra and aggregate base costs equal aggregate actual costs. According to petitioners, this does not signify that the product-specific costs upon which the reported COP and CV data are based were accurate. In fact, petitioners claim that the Department has rejected such arguments in the past, citing *Final Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Mexico,* 64 FR 7679 (January 4, 1999). To demonstrate the possible distortions that may occur with the use of a ''base cost'' system which accounts for actual costs on an aggregate level, petitioners refer to proprietary information which cannot be adequately summarized. However, in essence, petitioners argue that because of the possible differences between actual costs and potentially erroneous standards, the Department cannot have confidence that Usinor's base cost system is accurate.

Finally, petitioners contend that the Department's testing performed at verification does not provide assurance that Usinor's standard costs are accurate. For example, petitioners argue that the verification step to reconcile the cost of an extra (*i.e.,* the cost variations associated with a product's unique physical characteristics), with the amounts used in the cost build up means only that Usinor adhered to its base plus extra method. Likewise, the verification step to compare the consistency of the reported extras with those outside the POI only indicates that the inaccuracies contained in Usinor's previous figures also appear in the reported costs.

Usinor argues that petitioners are incorrect in alleging that it did not report any cost variances and therefore the Department should reject all product-specific costs. Usinor states that its base-plus-extra costing system reflects the actual production costs of the company. To calculate the reported costs, respondent states that it calculated the unit cost of the base product, the average extra costs associated with the base product, and any extras associated with a product's specifications. It then subtracted the average cost of extras from the average base product cost and added the extra costs associated with each unique product which resulted in the actual production costs for each product. Respondent argues that a similar methodology was verified and accepted by the Department in two recent cases. *See Final Results of Antidumping Duty Administrative Review: Certain Cold-Rolled Carbon Steel Flat Products from Germany,* 60 FR 65264, 65267 (1995) (*''Certain Cold-Rolled Carbon Steel Flat Products from Germany''*); see also Final Results of Antidumping Duty Administrative Review: Certain Cold-Rolled Carbon Steel Plate from Finland, 63 FR 2952, 2957 (January 20, 1998) (*''Certain Cut-to-Length Carbon Steel Plate from Finland''*).

Furthermore, Usinor argues that there is no support for petitioners' contention that the Department's cost verification confirms that Usinor's reported costs are based on standard costs and not actual costs. Rather, Usinor states that the Department recognized that the base-plus-extra cost system is founded on actual production costs and not standard costs adjusted to actual. Based upon this argument, Usinor urges the Department to accept the reported methodology just as it did in *Certain Cut-to-Length Carbon Steel Plate from Finland.* Finally, respondent states that the antidumping law allows costs to be computed based on the producer's normal accounting records, provided that it is kept in accordance with GAAP. In the instant case, respondent argues that the reported costs are kept in accordance with GAAP and are therefore an accurate basis for the calculation of COP and CV.

Department's Position: We disagree with petitioners' contention that we must reject Usinor's submitted COP and CV data for this investigation. In its normal accounting records, Usinor determines its product-specific costs by using a ''base plus extras'' method. For submission purposes, the company relied on this methodology. Contrary to petitioners' assertions, Usinor does not use a standard cost accounting system nor does it calculate variances. Instead, the system begins and ends with actual production costs. Specifically, Usinor's cost accounting system accumulates the actual costs incurred and actual tonnages produced by product group. The company then takes these total costs and deducts the total cost of extras to derive its base product costs. To calculate the product specific costs, Usinor simply adds the unique ''extras'' of a model to the base. Usinor used engineering studies to determine the cost of product-specific extras. Contrary to petitioners' allegation, we found nothing inherently unreliable or theoretically unsound about Usinor's underlying cost allocation methodology. In fact, we note that this method of using base-plus-extra is quite common for the industry. *See, e.g., Certain Cold-Rolled Carbon Steel Flat Products from Germany and Certain Cut-to-Length Carbon Steel Plate from Finland.* In both of these proceedings, the Department accepted COP and CV values calculated from the respondent's ''base-plus-extra'' cost accounting systems used in the normal course of business. Moreover, the record in the instant case contains the following factual information that justifies using Usinor's normal accounting system to calculate the unique cost of a CONNUM.

First, Usinor supported its product-specific costs with source documentation that was verifiable. For example, in its June 30, 1999, supplemental section D questionnaire response, Usinor provided documentation of the detailed calculations used to derive its quality extras. As noted earlier, Usinor based these calculations on engineering standards and its production experience. After reviewing and testing this information, we have no reason to believe that Usinor's extra cost calculations, which were based on data used by the company in its normal accounting records, do not reasonably represent the cost differences incurred to produce individual products. Furthermore, we note that section 773(f)(1)(A) of the Act specifically requires that costs be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the GAAP of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. We have found that following the GAAP provides the respondent and the Department with a reasonable, objective and predictable basis by which to compute costs for the merchandise under investigation. In accordance with the statutory directive, the Department will accept the company's ''normal'' costs if the cost data can be reasonably allocated to subject merchandise. In this instant case, we find the Usinor's costs do reasonably reflect the costs of the merchandise under investigation.

Second, the record contains several overall cost reconciliations that identify no misstatement or mis-allocations. For example, we reconciled Usinor's reported product-specific costs to its audited financial statements and noted no significant discrepancies. *See* ''Verification Report on the Cost of Production and Constructed Value Data Submitted by USINOR'' (October 27, 1999) at page 9 through 12, (*''Cost Verification Report''*). Thus, we confirmed that Usinor accounted for all of the manufacturing costs it incurred during the POI. In addition, we compared per-unit inventory values to reported per-unit CONNUM values and noted no significant discrepancies. Furthermore, we confirmed that Usinor's reported costs reasonably reflected the values as recorded in the ordinary course of business.

Finally, Usinor's product-specific costs are supported by detailed tests performed by the Department during verification. For example, we tested Usinor's calculations of weighted-average costs, base costs, and extra costs. See Cost Verification Report at pages 12 through 18. In addition, we documented that the costs for extras used by Usinor in the normal accounting system were in fact based on actual production and cost data, engineering standards, and company experience. For these reasons, we have relied on Usinor's base-plus extra costs for the final determination.

Comment 18: Calculation of Freight Expenses Included in Further Manufacturing Expenses

Petitioners claim that the Department should correct Berg's reported movement expenses. According to petitioners, Usinor calculated and reported the per-unit amount on a short-ton basis and not the metric-ton basis used for all other costs. Usinor did not comment on this issue.

Department's Position: We agree with petitioners that we should correct for this clerical error. As noted by petitioners, Berg reported its per unit movement expense (*i.e.,* inbound freight from port to production facility) for plate in short-tons. Usinor reported all other further manufacturing costs on a metric ton basis. Therefore, we adjusted the reported per-unit movement costs to reflect a per metric-ton value for 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 subject merchandise from France that were entered, or withdrawn from warehouse, for consumption on or after July 29, 1999 (the date of publication of the Department's preliminary determination). 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
Usinor	10.43
All others	10.43

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our determination. Because our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threatening material injury 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 issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33230 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–560–806]

Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia

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

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Eva Temkin or Richard Herring, Office of CVD/AD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 4012, 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 cut-to-length carbon-quality steel plate from Indonesia. For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section of this notice.

SUPPLEMENTARY INFORMATION:

Petitioners

The petition in this investigation was filed by Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation, Gulf States Steel, Inc., IPSCO Steel, Inc., Tuscaloosa Steel Corporation, and the United Steel Workers of America (the petitioners).

Case History

Since the publication of our preliminary determination in this investigation on July 26, 1999 (*Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From Indonesia,* 64 FR 40457 (*Preliminary Determination*)), the following events have occurred:

On July 15, we reissued the Department's June 22, 1999 supplemental questionnaire to the Government of Indonesia (GOI). We received a response on July 22, 1999. We conducted verification of the countervailing duty questionnaire responses from July 28 through August 3, 1999. Because the final determination of this countervailing duty investigation was aligned with the final antidumping duty determination (*see* 64 FR at 40458), and the final antidumping duty determination was postponed (*see* 64 FR 46341), the Department on August 25, 1999, extended the final determination of this countervailing duty investigation until no later than December 13, 1999 (*see* 64 FR 46341). On August 26, 1999, the Department released its verification reports to all interested parties. Petitioners filed comments on September 10, 1999. Respondents made no arguments. No rebuttal briefs were filed.

On November 23, 1999, we discontinued the suspension of liquidation of all entries of the subject merchandise entered or withdrawn from warehouse for consumption on or after that date, pursuant to section 703(d) of the Act. *See* the ''Suspension of Liquidation'' section of this notice.

Scope of Investigation

The products covered by this scope are certain hot-rolled carbon-quality steel: (1) universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils).

Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the

quantity, by weight, respectively indicated:
1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.,* USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

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 (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations as codified at 19 C.F.R. Part 351 (1998) and to the substantive countervailing duty regulations published in the **Federal Register** on November 25, 1998 (63 FR 65348) (CVD Regulations).

Injury Test

Because Indonesia 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 Indonesia materially injure, or threaten material injury to, a U.S. industry. On April 5, 1999, the ITC announced its preliminary 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 Indonesia of the subject merchandise (*see Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia,* 64 FR 17198 (April 8, 1999)).

Period of Investigation

The period of investigation for which we are measuring subsidies (the POI) is calendar year 1998.

Attribution of Subsidies

Section 351.525 of the CVD Regulations states that the Department will attribute subsidies received by two or more corporations to the products produced by those corporations where cross ownership exists. According to section 351.525(b)(6)(vi) of the CVD Regulations, cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation in essentially the same ways it can use its own assets. The regulations state that this standard will normally be met where there is a majority voting ownership interest between two corporations. The preamble to the CVD Regulations identifies situations where cross ownership may exist even though there is less than a majority voting interest between two corporations: ''in certain circumstances, a large minority interest (for example, 40 percent) or a 'golden share' may also result in cross-ownership.'' *See* 63 FR 65401.

Because we preliminarily found both Gunawan and Jaya Pari to have zero subsidy rates, we did not reach the question of whether the relationship between the companies satisfies the standard of cross-ownership. However, in the *Preliminary Determination*, we stated that if we discovered subsidies at verification or otherwise modified our findings so that one or more of the companies did indeed have a subsidy rate for the final determination, we would consider whether there is cross-ownership between Gunawan and Jaya Pari and thus, whether, for purposes of calculating a countervailing duty rate, we should attribute any subsidies received by either or both companies to the products produced by both companies. We invited the parties to comment on whether the relationship between the firms satisfies our new cross-ownership standard.

Since the publication of our *Preliminary Determination*, we have found no evidence of subsidies having been given to either Gunawan or Jaya Pari; nor have we otherwise modified our findings in a way such that either company has a subsidy rate in this final determination. Moreover, we received no comments from the parties on this issue. Thus, the question of whether the relationship between the companies satisfies the standard of cross-ownership is moot for purposes of this investigation.

Use of Facts Available

As discussed in detail in the *Preliminary Determination*, Krakatau failed to respond to any of the Department's questionnaires. The GOI provided some, although not all, of the information requested about Krakatau. In the *Preliminary Determination*, relying upon section 782(e) of the Act, the Department determined that based on the GOI's submission of some data, the administrative record was not so incomplete that it could not serve as a reliable basis for reaching a preliminary determination. Therefore, the Department used the GOI's data where possible, *i.e.*, the Department relied on information provided by the GOI to reach a preliminary determination that Krakatau had not used the Rediscount Loan Program and Tax Holiday Program. The Department only resorted to the facts otherwise available in those instances where data necessary for the calculation of Krakatau's subsidy rate was missing. *See Preliminary Determination*. In addition, as described in detail in the *Preliminary Determination*, the Department determined that in those instances when resort to facts available was necessary, the use of an adverse inference was warranted under section 776(b) of the Act because the Department determined that Krakatau failed to cooperate by not acting to the best of its ability in complying with requests for information in this investigation.

After the issuance of the *Preliminary Determination*, the Department attempted to verify with the GOI that Krakatau had not used the Rediscount Loan Program, but was unable to do so. *See* Memorandum to David Mueller, ''Verification Report of the Government of Indonesia,'' dated August 26, 1999 (*GOI Verification Report*), public version on file in the Central Records Unit (CRU) (Room B–099 of the Main Commerce Building). We were, however, able to verify that no respondent in this investigation used the Tax Holiday Program.

Section 782(e) of the Act provides that the Department shall not decline to consider information submitted by an interested party, if, among other factors, the information can be verified. Because information submitted by the GOI concerning Krakatau's use of the Rediscount Loan Program could not be verified, we have declined to consider it for this final determination, and find it necessary to resort to the facts available for this program, as well. Therefore, for this final determination, all components of Krakatau's subsidy rate are based on the facts available.

Moreover, the Department determines that when selecting among the facts otherwise available for the Rediscount Loan Program, an adverse inference is warranted because the GOI and Krakatau have failed to cooperate by not acting to the best of their abilities. Krakatau and the GOI failed on numerous occasions to respond to the Department's questions. Specifically, Krakatau has failed to participate in any way in this investigation. The GOI responded to the Department's initial questionnaire, but did not respond fully to supplemental questionnaires, and did not respond at all to the Department's final questionnaire. Regarding the information that the GOI did place on the record in this investigation, we specifically requested in the outline sent to the GOI prior to verification that the GOI be prepared to review any files maintained on the Rediscount Loan Program, and to demonstrate whether Krakatau used the program for shipments of subject merchandise to the United States in 1998. However, at verification, GOI officials stated that due to the nature and volume of their files on this program, they were unable to present them. Thus, the Department was unable to verify certain information submitted by the GOI. For these reasons, we find that the GOI, like Krakatau, did not cooperate to the best of its ability in this investigation.

Further, as stated in the *Preliminary Determination*, petitioners made new subsidy allegations with respect to Krakatau on June 7, 1999. The Department determined that these allegations were adequate, but as of the date of the *Preliminary Determination*, the Department had not had sufficient time to collect information from Krakatau and the GOI on the Pre-1993 Equity Infusions to Krakatau, P.T., Cold-Rolled Mill Indonesia (CRMI) Equity Infusions, and Two-Step Loan programs. Thus, we did not make preliminary determinations with respect to these programs' countervailability. We asked both Krakatau and the GOI to submit information specific to these allegations. We received no response from Krakatau, and the GOI stated that they did not have access to the relevant files.

Therefore, because both Krakatau and the GOI have failed to provide information necessary for the calculation of subsidy rates for these newly alleged programs, pursuant to section 776(a)(2)(B) of the Act, we find it necessary to resort to the facts otherwise available for this final determination. As described in detail in the *Preliminary Determination* and above, because we have determined that both Krakatau and the GOI have failed to cooperate to the best of their abilities in this investigation, we find the use of adverse inferences necessary when selecting among the facts available, in accordance with section 776(b) of the Act.

When employing an adverse inference, the statute indicates that the Department may rely upon information derived from (1) the petition; (2) a final determination in a countervailing duty or an antidumping investigation; (3) any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or (4) any other information placed on the record. *See also* section 351.308(c) of the CVD Regulations. Due to the absence of any other relevant information on the record, we consider the petition to be an appropriate source for the necessary information.

Furthermore, the Statement of Administrative Action accompanying the URAA clarifies that information from the petition and prior segments of the proceeding is ''secondary information.'' *See* Statement of Administrative Action, accompanying H.R. 5110 (H.R. Doc. No. 103–316) (1994) (SAA), at 870. If the Department relies on secondary information as facts available, section 776(c) of the Act provides that the Department shall, ''to the extent practicable,'' corroborate such information using independent sources reasonably at its disposal. The SAA provides that to corroborate secondary information means simply that the Department will satisfy itself that the secondary information to be used has probative value. Furthermore, the SAA explicitly states, ''[t]he fact that corroboration may not be practicable in a given circumstance will not prevent [Commerce] from applying an adverse inference . . . .'' SAA at 870.

As explained above, we are using the petition information as adverse facts available in countervailing the programs involved in this investigation. For a more detailed description of our treatment of these programs, see the program descriptions in the ''Programs Determined to be Countervailable'' section of this notice. Due to a lack of available public information, with respect to the programs for which we did not receive information from respondents, or for which we could not verify information which had been submitted, we corroborated the information used as adverse facts available by comparing it to the exhibits attached to the petition, including Krakatau's financial statements. In the case of the Rediscount Loan Program, we used information from *Final Negative Countervailing Duty Determination: Extruded Rubber Thread From Indonesia,* 64 FR 14695, (March 26, 1999) (*ERT*), where we examined the same program and found it to be countervailable. In addition, where calculations from the petition were used, we modified and adjusted the calculation of the *ad valorem* subsidy rates to conform to the Department's methodologies when necessary or when possible. More detailed explanations of our corroboration of the petition information is contained in the ''Equityworthiness'' and ''Programs Determined to be Countervailable'' sections of this notice. In places where we do not explain our corroboration of information used, we did not find it practicable to corroborate the information because of a lack of reasonably available independent sources. However, as discussed above, a finding that it is not practicable to corroborate certain information, does not prevent the Department from using the information as adverse facts available. *See* SAA at 870.

Changes in Ownership

In this investigation, we have examined subsidies that were conferred upon CRMI at a time when it was partially owned by Krakatau. Since that time, Krakatau has taken control over the remaining share of CRMI, which is presently a wholly-owned subsidiary of Krakatau. In change of ownership situations such as this, it is the Department's standard practice to follow the methodology outlined in the *General Issues Appendix* (*GIA*), attached to the *Final Affirmative Countervailing Duty Determination; Certain Steel Products from Austria,* 58 FR 37217, 37265 (July 9, 1993), with respect to the treatment of subsidies received prior to the sale of the company. *See also, Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil,* 64 FR 38741, 38745 (July 19, 1999).

Over the course of this investigation, we repeatedly asked both Krakatau and the government to provide information that would allow us to use this methodology, but they did not. In the absence of this information, as adverse facts available, for equity infusions provided to CRMI, we treated these equity infusions as though the entire amount was attributable to Krakatau. Accordingly, we assigned the total amount of the equity infusions directly to Krakatau.

Subsidies Valuation Information

Allocation Period

Section 351.524(d)(2) of the CVD Regulations states that we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System and updated by the Department of Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation, and the party can establish that the difference between the company-specific or country-wide AUL for the industry under investigation is significant.

In this investigation, no party to the proceeding has claimed that the AUL listed in the IRS tables does not reasonably reflect the AUL of the renewable physical assets for the firm or industry under investigation. Therefore, according to section 351.524(d)(2) of the CVD Regulations, we have allocated Krakatau's non-recurring benefits over 15 years, the AUL listed in the IRS tables for the steel industry.

Equityworthiness

In analyzing whether a company is equityworthy, the Department considers whether that company could have attracted investment capital from a reasonable private investor in the year of the government equity infusion based on the information available at that time. In this regard, the Department has consistently stated that a key factor for a company in attracting investment capital is its ability to generate a reasonable return on investment within a reasonable period of time. In making an equityworthiness determination, in accordance with section 351.507(a)(4) of the CVD Regulations, the Department may examine the following factors, among others:

A. Objective analyses of the future financial prospects of the recipient firm or the project as indicated by, *inter alia*, market studies, economic forecasts, and project or loan appraisals prepared prior to the government-provided equity infusion in question;

B. Current and past indicators of the recipient firm's financial health calculated from the firm's statements and accounts, adjusted, if appropriate, to conform to generally accepted accounting principles;

C. Rates of return on equity in the three years prior to the government equity infusion; and

D. Equity investment in the firm by private investors.

The Department has examined Krakatau's equityworthiness for the period 1988 through 1992, as well as in 1995, to the extent that equity infusions may have been received in these years. In our preliminary determination, we found that Krakatau was unequityworthy in 1995. We received no comments from the interested parties relating to our analysis of Krakatau's equityworthiness. Thus, for the reasons specified in the *Preliminary Determination*, we determine that Krakatau was unequityworthy in 1995. See *Preliminary Determination*, 64 FR at 40460.

The Department has also examined Krakatau's equityworthiness for the period 1988 through 1992, to the extent equity infusions may have been received in these years. Because neither Krakatau nor the GOI responded to our repeated attempts to gather information regarding the new allegations pertaining to the period 1988 through 1992, we used the information in the petition as adverse facts available in accordance with section 776(b) of the Act to conclude that Krakatau was unequityworthy during the period 1988 through 1992. (For further discussion, see the ''Facts Available'' section of this notice.)

With respect to factor A, no studies or other relevant data have been submitted to the record. The petition cites several press articles which describe Krakatau as inefficient, unprofitable, and uncompetitive during the years prior to 1992. *See* Countervailing Duty Petition, public version on file in the CRU. In order to corroborate the petition information demonstrating that Krakatau was inefficient and unprofitable prior to 1992, we examined the newspaper articles cited by the petition. We found that these independent sources did indeed describe Krakatau's financial and operational difficulties, thus corroborating a finding of unequityworthiness.

To address factors B and C, we examined Krakatau's financial ratios for 1990 through 1992, provided in the petition, which show that Krakatau's rates of return were far less than the average rate of return available in Indonesia. With respect to the final factor, Krakatau has no private investors. Therefore, there are no private investments that may be used to evaluate Krakatau's equityworthiness.

The available financial ratios, coupled with press reports used as adverse facts available, demonstrate that no reasonable private investor would have made equity investments in Krakatau during the period 1988 through 1992. On this basis, we find that Krakatau was unequityworthy during the period 1988 through 1992.

We have also examined the equityworthiness of Krakatau's subsidiary, the Cold Rolling Mill of Indonesia (CRMI), in 1989 and 1990, to the extent that equity infusions may have been received in these years. As discussed above, because neither Krakatau nor the GOI responded to our repeated attempts to gather information regarding the allegations pertaining to CRMI, we have relied upon the information provided in the petition as adverse facts available in accordance with section 776(b) of the Act. (For further discussion, see the ''Facts Available'' section of this notice.)

Because no financial statements for CRMI for years prior to 1994 have been available, the petition cites to several press articles to demonstrate CRMI's unequityworthiness. One such article, from 1989, quotes a government official (who was also a company official at the time) as stating that CRMI had failed to make a profit since being inaugurated in 1987. Another 1989 article reports that CRMI's money-losing performance was caused by large debts, technical problems and poor sales, which led to accumulated losses of about US$120 million. At the same time, CRMI's estimated debt was reported to be US$485 million. The petition shows that CRMI's financial situation declined further in 1990. According to press reports from 1990, the company's losses increased to US$150 million and its outstanding debts grew to US$492 million. In order to corroborate this petition information demonstrating CRMI's unequityworthiness, we examined the independent press reports cited in the petition and confirmed that they in fact described CRMI's operational and financial difficulties in a manner that supports an unequityworthy determination.

These articles are the only evidence on the record concerning CRMI's equityworthiness, and suggest that no reasonable private investor would have deemed CRMI capable of generating a reasonable rate of return within a reasonable period at the time of the equity infusions. On this basis, we determine that CRMI was unequityworthy in 1989 and 1990.

Equity Methodology

In measuring the benefit from a government equity infusion, in accordance with section 351.507(a)(2) of the CVD Regulations, the Department compares the price paid by the government for the equity to actual private investor prices, if such prices exist. According to section 351.507(a)(3) of the CVD Regulations, where actual private investor prices are unavailable, the Department will determine whether the firm was unequityworthy at the time of the equity infusion. In these cases, private investor prices were unavailable; thus, we conducted equityworthy analyses. As discussed above, we have determined that Krakatau was unequityworthy during the period from 1988 to 1992, and in 1995, and that CRMI was unequityworthy from 1989 to 1990.

Section 351.507(a)(3) of the CVD Regulations provides that a determination that a firm is unequityworthy constitutes a determination that the equity infusion was inconsistent with the usual investment practices of private investors. The Department will then apply the methodology described in section 351.507(a)(6) of the regulations, and treat the equity infusion as a grant. Use of the grant methodology for equity infusions into an unequityworthy company is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year based on the available information.

Creditworthiness

As discussed in the *Preliminary Determination*, we only initiated an investigation of Krakatau's creditworthiness during 1995. In the *Preliminary Determination*, based on adverse facts available, we found Krakatau to be uncreditworthy in 1995. We received no comments from the interested parties relating to our analysis of Krakatau's creditworthiness. Thus, for the reasons specified in the *Preliminary Determination,* we continue to find that Krakatau was uncreditworthy in 1995. *See Preliminary Determination*, 64 FR at 40461.

Discount Rates and Loan Benchmarks

For equity infusions given to Krakatau, we calculated the discount rates in accordance with the formula for constructing a long-term interest rate benchmark for uncreditworthy companies as stated in the Department's new regulations. *See* Section 351.505 (a)(3)(iii) of the CVD Regulations. This formula requires values for the probability of default by uncreditworthy and creditworthy companies. For the probability of default by an uncreditworthy company, we relied on the average cumulative default rates reported for the Caa to C-rated category of companies as published in Moody's Investors Service, ''Historical Default Rates of Corporate Bond Issuers, 1920–1997,'' (February 1998). For the probability of default by a creditworthy company, we used the average cumulative default rates reported for the Aaa to Baa.[1] Because no timely allegation of uncreditworthiness was made against CRMI in this investigation, no determination has been made regarding CRMI. Thus, we did not add an uncreditworthiness margin to interest rates used to calculate benefits received by CRMI.

For subsidies received by Krakatau between 1994 and 1998, we used the average cost of long-term fixed-rate loans in Indonesia as the interest rates that would have been paid by a creditworthy company, specifically the investment rates offered by commercial banks in Indonesia as reported in the Indonesian Financial Statistics of February 1999, attached to the GOI's April 29, 1999, questionnaire response, a public document on file in the CRU. In order to calculate a benefit for long-term allocable subsidies that were received prior to 1994, we used interest rate data for Indonesian long-term non-guaranteed commercial loans as published in the International Monetary *Fund's International Financial Statistics.* For 1998, since Indonesia experienced very high inflation during this year, we converted the subsidy into U.S. dollars and then applied a long-term dollar rate as the discount rate, specifically, the average yield to maturity on selected long-term Baa-rated bonds. *See* Memorandum to David Mueller, ''Preliminary Analysis and Calculations,'' dated July 16, 1999 (*Preliminary Analysis Memo*), public version on file in the CRU. This conforms with our practice in *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela,* 62 FR 55014, 55019 (October 22, 1997).

To calculate the benefit from the Two-Step Loan Program, because the loans were denominated in Austrian schillings, we used as our benchmark the Austrian national average government bond rate, as published in the International Monetary Fund's *International Financial Statistics.* While it is not our policy to use government bonds as a benchmark, due to the lack of record evidence in this investigation, a commercial lending rate was unavailable. Therefore, this is the only information we were able to find for a schilling benchmark. As with the equity infusions, we calculated the discount rates in accordance with the formula for constructing a long-term interest rate benchmark for uncreditworthy companies as stated in the Department's new regulations. *See* Section 351.505 (a)(3)(iii) of the CVD Regulations

For the Rediscount Loan Program, we used as our benchmark the reported average cost of short-term fixed-rate loans in Indonesia as the interest rate that would be paid by a creditworthy company, specifically the working capital rate offered by commercial banks in Indonesia as reported in the Indonesian Financial Statistics of February 1999, attached to the GOI's April 29, 1999, questionnaire response, a public document on file in the CRU.

I. Programs Determined To Be Countervailable

A. 1995 Equity Infusion into Krakatau

In the *Preliminary Determination*, because Krakatau did not respond to this allegation, we used the information and data provided in the petition as adverse facts available, in accordance with section 776(b) of the Act (*see* ''Facts Available'' discussion above). We corroborated this information in accordance with section 776(c) of the Act as described in the *Preliminary*

[1] We note that since publication of the CVD Regulations, Moody's Investors Service no longer reports default rates for Caa to C-rated category of companies. Therefore for the calculation of uncreditworthy interest rates, we will continue to rely on the default rates as reported in Moody Investor Service's publication dated February 1998 (see Exhibit 28).

Analysis Memo. We received no comments from the interested parties relating to our analysis of Krakatau's 1995 equity infusion. Thus, for the reasons specified in the *Preliminary Determination*, we determine that this equity infusion constituted a countervailable subsidy. *See Preliminary Determination*, 64 FR at 40461.

As explained in the ''Equity Methodology'' section above, we have treated equity infusions into unequityworthy companies as grants given in the year the infusion was received because no market benchmark exists. In accordance with section 351.507(c) of the CVD Regulations, the equity infusion is allocated as a non-recurring subsidy. We allocated the subsidy and converted the remaining face value of the infusion in 1998 into U.S. dollars using the average 1997 rupiah/dollar exchange rate and applied the long-term U.S. dollar uncreditworthy interest rate described in the ''Discount Rate'' section of this notice. We then divided the benefit amount allocable to the POI by Krakatau's estimated 1998 U.S. dollar total sales figure, which was calculated based on the facts available in the petitioner's submission and corroborated as detailed in the *Preliminary Analysis Memo*, public version on file in the CRU. On this basis, we determine the net countervailable subsidy to be 16.21 percent *ad valorem* for Krakatau.

B. Pre-1993 Equity Infusions to Krakatau

As discussed in the *Preliminary Determination,* on June 7, 1999, petitioners alleged that the GOI had made equity infusions into Krakatau prior to 1993. At the time of the preliminary determination, the Department had not had sufficient time to collect information from Krakatau and the GOI on the alleged Pre-1993 Equity Infusions to Krakatau, and so did not make a determination with respect to this program's countervailability.

After the preliminary determination, both Krakatau and the GOI were given an opportunity to provide information regarding these programs, but they did not. Therefore, in accordance with section 776(b) of the Act, we have used the information contained in the petition as adverse facts available in order to make a determination with regard to this program. (*See* ''Facts Available'' discussion above).

According to the petitioners, the GOI provided Krakatau with equity infusions totaling US$765 million during the period from 1988 to 1992. We corroborated the assertion made in the petition by comparing it to the independent newspaper article cited in the petition which states that, ''Excluding the cold-rolled mill, government subsidies for Krakatau totaled Rps. 1.6 trillion (US$765 million) in the five years to 31 December 1992.''

Because we have determined that Krakatau was unequityworthy during this period in accordance with section 776(b) of the Act, we determine that under section 771(5)(E)(i) of the Act, these equity infusions into Krakatau were not consistent with the usual investment practice of a private investor and confer a benefit in the amount of each infusion (*see* ''Equityworthiness'' section above). The equity infusions are specific within the meaning of section 771(5A)(D) of the Act because they were limited to Krakatau. Accordingly, we find that the equity granted to Krakatau during the period in question provides a countervailable subsidy within the meaning of section 771(5) of the Act.

As explained in the ''Equity Methodology'' section above, we have treated equity infusions into unequityworthy companies as grants given in the year the infusion was received because no market benchmark exists. In accordance with section 351.507(c) of the CVD Regulations, the equity conversion is allocated as a non-recurring subsidy. Due to the lack of record information regarding this program, we were unsure of the years in which the equity was given. Therefore, we treated the entire amount as a grant provided in equal payments over the five-year period from 1988 to 1992. We allocated the subsidy and converted the remaining face value of the infusion in 1998 into U.S. dollars using the average 1997 rupiah/dollar exchange rate and applied the long-term U.S. dollar interest rate to uncreditworthy companies described in the ''Discount Rate'' section of this notice. We then divided the benefit amount allocable to the POI by Krakatau's estimated 1998 U.S. dollar total sales figure, which was calculated based on the facts available in the petitioner's submission and corroborated as detailed in our *Preliminary Analysis Memo.* On this basis, we determine the net countervailable subsidy to be 16.66 percent *ad valorem* for Krakatau.

C. 1989 Equity Infusion to CRMI

As discussed in the *Preliminary Determination*, on June 7, 1999, petitioners alleged that massive equity infusions were provided to Krakatau's subsidiary, the Cold Rolling Mill of Indonesia (CRMI). Krakatau owned 40 percent of CRMI's equity until 1991, when it purchased the remaining shares to become a 100 percent owner. Petitioners alleged that these 1989 and 1990 equity infusions provided a countervailable benefit to Krakatau based on its ownership share in CRMI. At the time of the preliminary determination, the Department had not had sufficient time to collect information from Krakatau and the GOI on the alleged Equity Infusions to CRMI, and so did not make a determination with respect to this program's countervailability. Since the preliminary determination, however, the Department afforded both Krakatau and the GOI the opportunity to provide information regarding these subsidy allegations. Because neither party responded to our questionnaires, we have used the information contained in the petition as adverse facts available, in accordance with section 776(b) of the Act. (*See* ''Facts Available'' discussion above).

According to the Countervailing Duty Petition, the GOI provided CRMI with an equity infusion totaling US$75 million in 1989. In support of this allegation, the petition points to quotes from GOI officials regarding the cash injections. To the extent practicable, we have corroborated the information provided in the petition with numerous press articles which describe the equity infusion, provided as attachments to the petition. On the basis of this information, as adverse facts available, we determine that under section 771(5)(E)(i) of the Act, these equity infusions into CRMI were not consistent with the usual investment practices of a private investor and confer a benefit to CRMI in the amount of each infusion (*see* ''Equityworthiness'' section above). The equity infusions are specific within the meaning of section 771(5A)(D) of the Act because they were limited to CRMI. Accordingly, we find that the equity granted to CRMI during the period in question provides a countervailable subsidy within the meaning of section 771(5) of the Act.

As discussed in the ''Changes in Ownership'' section, above, as adverse facts available, we are assuming that Krakatau did not pay for its total acquisition of CRMI in 1991. Therefore, all of the benefit to CRMI would have passed through to Krakatau at the time of the acquisition. As explained in the ''Equity Methodology'' section above, we have treated equity infusions into unequityworthy companies as grants given in the year the infusion was received because no market benchmark exists. In accordance with section 351.507(c) of the CVD Regulations, the equity conversion is allocated as a non-recurring subsidy. Therefore, we treated the entire amount as a grant given to Krakatau in 1989. We allocated the subsidy over 15 years, and applied the long-term U.S. dollar uncreditworthy interest rate described in the ''Discount Rate'' section of this notice. We then divided the benefit amount allocable to the POI by Krakatau's estimated 1998 U.S. dollar total sales figure, which was calculated based on the facts available in the petitioner's submission and corroborated as detailed in our *Preliminary Analysis Memo.* On this basis, we determine the net countervailable subsidy to be 1.50 percent *ad valorem* for Krakatau.

D. Three-Step Equity Infusion to CRMI

Information in the petition indicates that in 1989, an equity infusion of US$357 million was to be provided to CRMI in three installments—US$290 million, US$49 million and US$18 million. A 1990 article corroborates that the GOI was considering an equity infusion in the amount of US$290 to CRMI. *See* Third Petition Attachment, Exhibits 15, 48. At the time of the preliminary determination, the Department had not had sufficient time to collect information from Krakatau and the GOI on these alleged Equity Infusions to CRMI, and so did not make a determination with respect to this program's countervailability.

After the preliminary determination, both Krakatau and the GOI were given the opportunity to provide information regarding these programs, but did not. Therefore, as adverse facts available, we determine that under section 771(5)(E)(i) of the Act, these equity infusions into CRMI were not consistent with the usual investment practice of a private investor and confer a benefit to CRMI in the amount of each infusion (*see* ''Equityworthiness'' section above). To the extent that Krakatau had a 40 percent stake in CRMI at the time of the infusion, and has full ownership presently, the benefit to CRMI is equivalent to a benefit to Krakatau. The equity infusions are specific within the meaning of section 771(5A)(D) of the Act because they were limited to CRMI. Accordingly, we find that the equity granted to CRMI during the period in question provides a countervailable subsidy within the meaning of section 771(5)(A) of the Act.

As explained in the ''Changes in Ownership'' section above, as adverse facts available, we are assuming that all of the benefit to CRMI would have passed through to Krakatau at the time of the acquisition. As explained in the ''Equity Methodology'' section above, we have treated equity infusions into unequityworthy companies as grants given in the year the infusion was received because no market benchmark exists. In accordance with section 351.507(c) of the CVD Regulations, the equity conversion is allocated as a non-recurring subsidy. Therefore, we treated the entire amount as a grant. The information in the petition, corroborated by an independent newspaper article attached to the petition, indicated that the GOI was going to give the infusion in 1990; likewise, we have treated this equity infusion as a grant given to Krakatau in 1990. We allocated the subsidy and applied the long-term U.S. dollar interest rate described in the ''Discount Rate'' section of this notice. We then divided the benefit amount allocable to the POI by Krakatau's estimated 1998 U.S. dollar total sales figure, which was calculated based on the facts available in the petitioner's submission and corroborated as detailed in our *Preliminary Analysis Memo.* On this basis, we determine the net countervailable subsidy to be 7.64 percent *ad valorem* for Krakatau.

E. Two-Step Loan Program

Prior to the Department's preliminary determination in this proceeding, the petitioners alleged that the GOI had provided so-called ''two-step loans'' to Krakatau for the construction of certain fixed assets. At the time of the preliminary determination, the Department had not had sufficient time to collect information from Krakatau and the GOI regarding this alleged Two-Step Loan program, and so did not make a determination with respect to this program's countervailability. Although the GOI and Krakatau were both asked repeatedly to respond to the Department's questions about this program, neither party provided any information that could be used in making a determination with respect to this program's countervailability. Thus, in accordance with section 776(b) of the Act, we have used the information provided by petitioner as adverse facts available. (*See* ''Facts Available'' discussion above).

According to the petition, and corroborated by the descriptions contained in Krakatau's 1996 and 1997 annual reports, these two-step loans were drawn by Krakatau from ''credit facilities'' (*i.e.,* lines of credit) in the billing currencies of its equipment suppliers, who, in turn, receive payment from banks appointed by lenders. According to Krakatau's annual reports, the loans, which were converted into rupiah based on the exchange rate on the drawing date, are repayable in the currency in which they were borrowed, Austrian schillings. Krakatau's annual reports indicate that Krakatau received a credit facility from the GOI in fiscal year (FY) 1995 for ''optimization projects for the slab steel plant and billet steel plant'' from which it drew down loan amounts in FY 1995, FY 1996, and FY 1997. For all loan amounts drawn under this credit facility, Krakatau pays interest at a rate of 4 percent per annum. The first principal installment on the loan balance is scheduled for April 30, 2003 and last payment on October 30, 2020.

In 1995, the year in which the credit facilities were extended, a lending rate of 4 percent would be inconsistent with an interest rate the company would have received on a comparable commercial loan denominated in Austrian schillings, and would thus provide a benefit pursuant to section 351.505(a) of the Department's regulations. (*See* the International Monetary Fund's International Financial Statistics, October 1999, at 110). The information provided in the petition and corroborated by the company's financial statements further demonstrates that these loans are specific because they were provided by the GOI as part of the financing for Krakatau's projects. There is no information on the record of this investigation which would indicate that the two-step loan was provided to Krakatau pursuant to a program to which other companies ostensibly had access. As adverse facts available, pursuant to section 776(b) of the Act, we find that the loan is specific as a matter of law. Accordingly, we find that the two-step loan granted to Krakatau provides a countervailable subsidy within the meaning of section 771(5) of the Act.

In order to calculate the benefit from this program, we compared the interest rates Krakatau paid on these two-step loans during the POI to the interest rates the company would have paid for comparable commercial loans, based on the long-term Austrian schilling loan benchmark for uncreditworthy companies described in the ''Discount Rates'' section of this notice, above. This difference was then divided by Krakatau's estimated sales during the POI which were calculated based on petition information and corroborated as detailed in the *Preliminary Analysis Memo.* On this basis, we determine the countervailable subsidy from this program to be 0.65 percent *ad valorem* for Krakatau.

F. Rediscount Loan Program

In our *Preliminary Determination,* the Department found that Krakatau had not used this program. This determination was based on information provided by the GOI; this information indicated that while Krakatau was eligible to receive benefits under this program, it had neither applied for nor received such benefits. The Department found, at the preliminary stage of this investigation, that the administrative record with regard to Krakatau was not so incomplete that it could not serve as a reliable basis for reaching a determination with regard to this program.

According to section 782(e)(2) of the Act, the Department shall not decline to consider information submitted by an interested party if, among other factors, the information can be verified. We attempted to verify with the GOI that Krakatau had not used the Rediscount Loan Program, but were unable to do so. *See, GOI Verification Report* at 3. As explained in the ''Facts Available'' section of this notice, we have determined to resort to adverse facts available for our determination with regard to this program.

Under Decree No. 132/MPP/Kep/1996 of June 4, 1996, the Ministry of Industry and Trade, the Ministry of Finance, and the Bank of Indonesia (BI) provide support for certain exporters with the goal of achieving diversification of the Indonesian export base. Companies designated as Perusahaan Eksportir Tertentu (PET) are eligible to participate in this program. Under the program, PETs sell their letters of credit and export drafts at a discount to the BI through participating foreign exchange banks, which are commercial banks that have obtained a license to conduct activities in foreign currencies. The sale of the letters of credit and export drafts by the PETs provides them with working capital at lower interest rates than they would otherwise pay on short-term commercial loans.

This same program was determined to constitute an export subsidy in *Final Negative Countervailing Duty Determination: Extruded Rubber Thread From Indonesia,* 64 FR 14695 (March 26, 1999) (*ERT*).

On the basis of this information, and in conformance with section 776(b) of the Act, we determine that the loans provided under this program are countervailable in accordance with section 771(5)(A) of the Act. Through this program, the BI provides working capital to PETs at interest rates which are more favorable than those provided to non-PETs. The benefit is the difference between the amount the borrower of the loan pays on the loan and the amount the borrower would pay on a comparable commercial loan. Finally, because the program is contingent upon export performance, it is an export subsidy under section 771(5A)(B) and is, therefore, specific.

In the *ERT* determination, the Department verified that the interest rates in effect during that investigation's POI were the Singapore Interbank Offering Rate (SIBOR) for PETs, and SIBOR plus 1 percent for non-PETs. *See ERT,* 64 FR at 14696. The interest rates used in the petition, as corroborated by the questionnaire response of the GOI were SIBOR for PET exporters, and SIBOR plus 1 percent for non-PET exporters during the first half of the POI. During the second half of the POI rediscount loan rates rose to SIBOR plus 3 percent for PET exporters, and SIBOR plus 4 percent for non-PET exporters. *See Third Petition Amendment,* Exhibit 42; *see also GOI Verification* at 2. Thus, we have used these interest rates to calculate the benefit to Krakatau. We compared the interest rates Krakatau paid on loans for shipments to the United States to the interest rates that non-PET companies would have had to pay for comparable commercial short-term loans. This difference was then divided by Krakatau's total exports sales. As adverse facts available, we used the estimated export sales calculated in the petition to calculate the subsidy rate. On this basis, we determine the countervailable subsidy from this program to be 5.05 percent *ad valorem* for Krakatau.

Based on the verified information provided by respondents and the GOI, we determine that neither Gunawan nor Jaya Pari applied for or received benefits under the Rediscount Loan Program during the POI.

II. Program Determined Not To Exist

Reduction in Electricity Tariffs

In the *Preliminary Determination,* the Department found no basis for concluding that the steel industry had received a special electricity discount. Moreover, based on the record evidence, the electricity discount was not limited to a specific enterprise, industry or group thereof, but was available to all industrial users in the country. Therefore, we preliminarily determined that the electricity discount program is not countervailable. (*See Preliminary Determination,* 64 FR at 40462).

At verification, we met with officials from the government-owned electricity company, PLN, to discuss the tariff rates. Officials explained that, prior to the increase in question, the last tariff schedule was implemented in 1994. The President established a tariff increase with Decree No. 70 of 1998, because of the increased costs of providing electricity. The increase was to be implemented in three stages. However, due to the financial crisis and the instability of the rupiah, only the first of these three stages was actually implemented, in May 1998. In early 1999, with Presidential Decree No. 1, 1999, the second two stages were officially postponed in a decree which legalized the existing tariff schedule. *See* Exhibit 12 to the GOI's June 2, 1999, questionnaire response, public version on file in the CRU. Thus, the subsequent stages were never implemented and there were no refunds. The May 1998 tariff schedule is still presently in place.

Additionally, we verified that there are no special rates for particular industries; all industries are charged based on industrial usage categories. On these bases, we find this program not to exist.

III. Program Determined To Be Not Used

Based on the verified information provided by respondents and the GOI, we determine that neither Gunawan nor Jaya Pari applied for or received benefits from Corporate Income Tax Holidays during the POI. With regard to Krakatau, the facts available regarding this program have not changed from the preliminary determination; therefore we continue to find that Krakatau did not use this program during the POI.

Interested Party Comments

Comment 1: Whether the Department Should Countervail the 1989 Equity Infusion to CRMI, the Three-Step Equity Infusion, and the Two-Step Loan from the GOI

Petitioners argue that the Department should countervail three subsidies to Krakatau which were outlined in the June 7, 1999 amendment to the petition: the 1989 Equity Infusion to CRMI, the Three-Step Equity Infusion, and the Two-Step Loan from the GOI. The information in the petition amendment was not rebutted by Krakatau or the GOI, nor did Krakatau or the GOI present any affirmative information regarding these programs in the investigation. Therefore, petitioners argue, the Department should apply adverse facts available in its final determination, in accordance with the Department's own regulations.

Department's Position: We agree with Petitioners. In the *Preliminary Determination,* we stated that due to the lateness of the allegations, the parties had not been given sufficient time to provide information with regard to these alleged programs. However, since the preliminary determination, both Krakatau and the GOI have been afforded opportunities to present information regarding these allegations. Neither Krakatau nor the GOI responded to our questions concerning these programs. Therefore, as discussed in detail in both the ''Use of Facts Available'' and ''Programs Determined to be Countervailable'' sections of this notice, we have applied adverse facts available in accordance with the Department's regulations, at 351.308(a) and with section 776(b) of the Act.

Comment 2: Whether the GOI has Failed Verification with Respect to the Rediscount Loan Subsidy

In the *Preliminary Determination,* the Department found that Krakatau had not used rediscount loans, on the basis of the GOI's questionnaire responses. However, petitioners assert that the GOI had placed conflicting information on the record, information that should have been clarified at verification. As the Department was unable to verify this program, petitioners argue that the Department should resort to the use of facts available to countervail Krakatau's use of this program, which has been found to be countervailable in prior proceedings. To support their position, petitioners point to the verification outlines, which clearly stated that the Department would need to examine records maintained on Krakatau with regard to this subsidy. Because the Department requested that the GOI be prepared to present documentation at verification, petitioners argue that the GOI should have been fully prepared for verification.

Simply put, petitioners argue that because officials from the GOI were unable to present information beyond mere assertions at verification that Krakatau did not use this program, the GOI failed verification with respect to this program and the Department is obliged to countervail Krakatau's use of this program as adverse facts available. Petitioners cite to *Stainless Steel Sheet and Strip in Coils from Taiwan,* in which the Department applied adverse facts available because a party was in control of necessary information but did not provide that information.

Department's Position: As discussed in the ''Use of Facts Available'' section of this notice, above, according to section 782(e)(2) of the Act, the Department shall not decline to consider information if, among other factors, that information can be verified. In this case, we attempted to verify with the GOI that Krakatau had not used the Rediscount Loan Program, but were unable to do so. At verification, we asked to review any records the Bank of Indonesia maintains with regard to the users of this program. The officials indicated that, although they searched their files for any information on Krakatau Steel and did not find anything, it was not possible to review each and every file to demonstrate that Krakatau did not use the program. *See, GOI Verification Report,* page 3. Moreover, the government officials did not propose any other way in which Krakatau's non-use could be adequately verified. Consequently, we agree with petitioners' assertion that the Department was unable to verify Krakatau's non-use of the rediscount loan program and we must, therefore, base our final determination on the facts available on the record. Additionally, as explained in the ''Facts Available'' section above, because we determined that the GOI failed to cooperate by not acting to the best of its ability in this investigation, we determined that an adverse inference is warranted when selecting among the facts available. For more information, *see* the ''Programs Determined to be Countervailable'' section of this notice.

Verification

In accordance with section 782(i) of the Act, except as noted in the ''Facts Available'' and ''Programs Determined to Be Countervailable'' sections, above, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with the government and company officials, and examining relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the CRU.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated individual rates for each of the companies under investigation.

According to section 705(5)(A)(i) of the Act, the all others rate normally will be ''an amount equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates and any rates determined entirely under section 776.'' In this case, all exporters and producers individually investigated have zero rates or a rate based entirely on facts available.

According to section 705(5)(A)(ii) of the Act, in situations where the countervailable subsidy rates established for all exporters and producers individually investigated are zero or *de minimis* rates, or are determined entirely under section 776, the Department may use any reasonable method to establish an all others rate. In antidumping duty investigations, where petitions typically have a range of calculated dumping rates, the Department often bases the all others rate on a simple average of the petition rates in such situations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Italy,* 64 FR 15458, 15459 (Mar. 31, 1999). In this investigation, we do not have information from the petition that would allow us to calculate the all others rate in this fashion. Therefore, we have considered the options of using a weighted average of the countervailing subsidy rates of the exporters and producers individually examined in this investigation or a simple average of these same rates. Because of concerns about the potential disclosure of proprietary data through the use of a weighted average of the subsidy rates in this case, the Department has decided to use a simple average of the subsidy rates of the producers and exporters examined as the all others rate in this case.

Producer/exporter	Net subsidy rate
P.T. Krakatau Steel ...	47.71% ad valorem
P.T. Gunawan Steel ..	0.00% ad valorem
P.T. Jaya Pari	0.00% ad valorem
All others rate	15.90% ad valorem

In accordance with our preliminary affirmative determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of certain cut-to-length carbon-quality steel plate from Indonesia which were entered, or withdrawn from warehouse, for consumption on or after July 26, 1999, the date of the publication of our preliminary determination in the **Federal Register**. In accordance with section 703(d)(3) of the Act, which provides that suspension ordered after the preliminary determination may not remain in effect for more than four months, we instructed the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after November 23, 1999, but to continue the suspension of liquidation of entries made between July 26 and November 22, 1999.

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 above. Because the estimated net countervailing duty rates for Gunawan and Jaya Pari are zero, these companies will be excluded from the suspension of liquidation, and the order, if one is issued.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, 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. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order.

Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 704(g) and 777(i) of the Act.

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33231 Filed 12–28–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–805]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia

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

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Barbara Wojcik-Betancourt or Brian C. Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0629 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 of Commerce (''Department'') regulations are to the regulations at 19 CFR Part 351 (1999).

Final Determination: We determine that certain cut-to-length carbon-quality steel plate products (''CTL Plate'') from Indonesia are being sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the preliminary determination (*Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Quality Steel Plate Products from Indonesia,* 64 FR 41206 (July 29, 1999)) (*Preliminary Determination*), the following events have occurred:

On July 23, 1999, the Department received Krakatau's response to the Department's July 8, 1999, supplemental questionnaire. Even though the Department received Krakatau's response three days after the questionnaire response deadline, Department officials examined the data to determine whether Krakatau fully responded to the Department's questionnaire. On July 28, 1999, the Department informed Krakatau that it was not going to proceed with verification of Krakatau's response because it did not adequately address the sales-related and cost-related questions. Also, on July 28, 1999, the petitioners[1] alleged ministerial errors in the preliminary determination. On July 29, and 30, 1999, Krakatau submitted letters objecting to the Department's decision not to conduct verification.

On August 4, 1999, PT Gunawan Dianjaya Steel (''Gunawan'') and PT Jaya Pari Steel Corporation (''Jaya Pari'') submitted a proposal for a suspension agreement to the Department. Department officials subsequently met with counsel for Gunawan/Jaya Pari and an official from the Indonesian government to discuss the likelihood of a suspension agreement (*see* Memorandum to the File from Wendy Frankel, Special Assistant to the Deputy Assistant Secretary, dated August 27, 1999). In that meeting, Department officials indicated that a suspension agreement in this case was unlikely because the proposed agreement did not meet the requisite conditions.

From August 10 through 19, 1999, we conducted verification of Gunawan/Jaya Pari's sales and cost responses to the antidumping questionnaire. On August 17, 1999, the Department issued the amended preliminary determination, correcting certain ministerial errors, and postponed the final determination until no later than 135 days after publication of the preliminary determination (*see Notice of Amendment of the Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Indonesia,* 64 FR 46341, August 25, 1999) (''*Amended Prelim*'').

On August 24, 1999, Krakatau requested a hearing. In response to numerous improperly filed letters sent by Krakatau between August 12 and 24, 1999, the Department issued a letter to Krakatau on August 25, 1999, explaining the procedures for submitting case and rebuttal briefs and extending the deadlines for submitting such documents.

During September and October 1999, we issued our verification reports for Gunawan/Jaya Pari. The petitioners and Gunawan/Jaya Pari submitted case briefs on October 19, 1999, and rebuttal briefs on October 25, 1999. The Department received Krakatau's case brief on October 14, 1999, and rebuttal brief on October 25, 1999. On October 27, 1999, the Department held a public hearing.

On November 22, 1999, the petitioners alleged that one of the respondents either had not reported certain U.S. sales made during the period of investigation (''POI'') or had not reported price reductions for certain U.S. sales made during the POI. Because we do not have sufficient information on the record to substantiate this allegation, and because this allegation was made at a very late stage of the proceeding, we did not consider it for purposes of this final determination. However, if an antidumping duty order is ultimately issued in this case, we will

[1] The petitioners are Bethlehem Steel Corporation, Gulf States Steel, Inc., IPSCO Steel Inc., Tuscaloosa Steel Corporation, the United Steelworkers of America, and the U.S. Steel Group (a unit of USX Corporation).

examine carefully all sales of this company in any future review.

Scope of Investigation

For purposes of this investigation, the products covered by the scope of this investigation are certain hot-rolled carbon-quality steel: (1) universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (''HSLA'') steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (''HTSUS'') definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of this investigation unless otherwise specifically excluded. The following products are specifically excluded from this investigation: (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.,* USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to this investigation is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The POI is January 1, through December 31, 1998.

Facts Available

Because we did not receive an adequate questionnaire response from Krakatau, we could not conduct verification and, therefore, could not use its data for the final determination. For the reasons explained in detail below, we have applied to Krakatau an adverse facts available margin, the highest margin alleged in the petition (52.42 percent), for purposes of the final determination.

1. Application of Facts Available

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(c)(1), (d) and (e), facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that, if an interested party promptly notifies the Department that it is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the Department shall take into consideration the ability of the party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Pursuant to section 782(e) of the Act, notwithstanding the Department's determination that the submitted information is ''deficient'' under section 782(d) of the Act, the Department shall not decline to consider such information if all of the following requirements are satisfied: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In this investigation, Krakatau failed to provide the information necessary to properly calculate a dumping margin, in the form and manner requested by the Department. As explained below, in response to Krakatau's request for assistance under section 782(c)(1), the Department attempted to assist Krakatau under section 782(c)(2) in understanding the Department's reporting requirements by visiting its facilities to respond to its questions and issuing it various supplemental questionnaires and instructional letters prior to the preliminary determination. We also provided Krakatau with an opportunity to supplement its questionnaire response after the preliminary determination in order to address numerous deficiencies and omissions of data which rendered its previous response inadequate for use in the preliminary determination. Krakatau's supplemental response continued to contain numerous deficiencies and omissions of data, and did not provide alternative methodologies, which prevented the Department from conducting verification and using its data in the final determination. Thus, pursuant to sections 776(a)(2)(A) and (B) of the Act, and having satisfied the requirements under sections 782(c)(2), (d) and (e), the Department must apply facts otherwise available in this case.

2. Selection of Facts Available

Section 776(b) of the Act provides that adverse inferences may be used in selecting from the facts available if a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) also authorizes the Department to use as adverse facts available information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' See the Statement of Administrative Action (''SAA'') at 870.

In this case, Krakatau, a *pro se* company, had requested the Department's assistance in responding to the questionnaire under section 782(c) of the Act. In response to Krakatau's request for assistance, the Department helped Krakatau to understand the reporting requirements. The Department's assistance in this regard included sending staff to Krakatau's facilities in Jakarta, Indonesia, to clarify and elaborate on the Department's reporting requirements contained in the questionnaire and numerous subsequent Departmental letters instructing Krakatau of the Department's reporting requirements in general and informing it of its reporting deficiencies in particular. Krakatau was provided numerous opportunities and extensions of time to fully respond to the Department's questionnaire (*see Preliminary Determination* at 64 FR 41207, 41209). However, despite the assistance offered by the Department's staff, Krakatau failed to provide a questionnaire response that addressed the most important deficiencies identified by the Department in its May 27 and July 8, 1999, supplemental questionnaires. Moreover, Krakatau failed to provide a reasonable explanation for its failure to comply with these standard requests for information. Accordingly, the Department finds that Krakatau did not act to the best of its ability to provide the information requested, despite the extensive assistance provided by the Department. Therefore, we have used an adverse inference in selecting the facts available to determine Krakatau's final margin.

In the preliminary determination, recognizing Krakatau's effort to comply with the Department's information requests and in light of its claimed reporting difficulties up until that time, the Department assigned Krakatau the simple average of the margins contained in the petition under section 776(b) of the Act, which the Department corroborated, to the extent practicable, from independent sources reasonably at its disposal under section 776(c) of the Act (*see Preliminary Determination* at 64 FR 41209, and *Memorandum to the File regarding the Facts Available Rate and Corroboration of Secondary Information* dated July 19, 1999). However, for the final determination, we have determined it is more appropriate to assign Krakatau the highest margin in the petition, 52.42 percent, which is also higher than the rate calculated for the only other respondent in this investigation, because Krakatau did not provide an adequate response that the Department could verify and use in the final determination, despite the numerous opportunities and extensive assistance afforded to it by the Department as explained above. (*See* Krakatau Comment 1 in the ''Interested Party Comments'' section of this notice for further discussion.) We continue to find this margin corroborated for the reasons discussed in the preliminary determination.

Fair Value Comparisons

We made our fair value comparisons in the manner described in the preliminary determination (*see Preliminary Determination* at 64 FR 41209). Gunawan/Jaya Pari argued that the Department should use two averaging periods in its margin calculations to account for the effect of low inflation during the second half of the POI. We continued to find that Indonesia experienced significant inflation throughout the POI, as measured by the Wholesale Price Index, published in the September 1998—September 1999 issues of International Monetary Fund's (''IMF's'') *International Financial Statistics* (*see* Memorandum from the Team to the File, ''Inflation Data Used and Statistical Analysis Performed for Determining Whether High Inflation Was Present During the Period of Investigation,'' dated December 13, 1999). For the reasons discussed in detail in Comment 1 of the ''Gunawan/Jaya Pari Interested Party Comments'' section of this notice below, we continued to use monthly averages within one averaging period for purposes of this final determination

Product Comparisons

We made our product comparisons using the same methodology as in the preliminary determination (*see Preliminary Determination* at 64 FR 41209).

Level of Trade

Consistent with our preliminary determination, we continue to find that no level of trade (''LOT'') adjustment under section 773(a)(7)(A) of the Act is warranted because the U.S. sales and home market sales made by Gunawan and Jaya Pari were at the same LOT (*see Preliminary Determination* at 64 FR 41210).

Export Price

As in the preliminary determination, for both Gunawan and Jaya Pari, we used export price (''EP'') methodology, in accordance with section 772(a) of the Act, because the merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price (''CEP'') methodology was not otherwise indicated.

Gunawan/Jaya Pari

We calculated EP using the same methodology as in the preliminary determination, with the following exceptions:

Based on our verification findings, we made the following revisions to Gunawan's U.S. sales database: (1) for some sales, we deducted an amount from EP for Indonesian port handling charges and loading charges; (2) we revised the reported U.S. inland freight expenses from the factory to the port of exportation to reflect actual expenses for all sales; (3) we corrected an amount reported for a quantity discount noted for one sales invoice; and (4) we corrected an amount reported for bank charges noted for a different sales invoice (*see* September 16, 1999, Gunawan verification report for further discussion).

Based on our verification findings, we made the following revisions to Jaya Pari's U.S. sales database: (1) we revised the reported U.S. inland freight expenses from the factory to the port of exportation to reflect actual expenses for all sales; (2) and we corrected the reported advertising expenses because Jaya Pari used an incorrect allocation factor (*see* September 23, 1999, Jaya Pari verification report for further discussion).

Normal Value

After testing home market viability and whether home market sales were made at prices below the cost of production (''COP''), we calculated normal value (''NV'') as noted in the ''Price-to-Price Comparisons'' and ''Price-to-CV Comparisons'' sections of this notice. As noted in the preliminary determination, we did not conduct an arm's-length test on affiliated party transactions because we continued to find that Gunawan and Jaya Pari met the criteria for collapsing affiliated companies. Therefore, we continued to treat Gunawan and Jaya Pari as a single entity for purposes of our analysis (*see Preliminary Determination* at 64 FR 41209–41210).

1. Cost of Production Analysis

As discussed in the preliminary determination, we conducted an investigation to determine whether Gunawan/Jaya Pari made sales of the foreign like product in the home market during the POI at prices below the 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 reflect certain adjustments and updated cost data based on verification findings (*see* Final Calculation Memorandum, dated December 13, 1999). Specifically, we relied on the respondents' COP and CV amounts except as follows:

A. We adjusted the reported nominal monthly depreciation expense figures to reflect each month's currency levels.

B. We adjusted the reported costs based on the corrections provided by Gunawan and Jaya Pari at the first day of verification.

C. We revised Jaya Pari's reported per-unit variable and fixed overhead to include the company's year-end audit adjustments.

D. We recalculated the yield adjustment factor applied to direct labor, variable and fixed overhead by dividing the rupiah/kilogram cost by the yield adjustment factor, rather than multiplying by the yield adjustment factor.

E. For those months in which Jaya Pari had no production, we allocated the factory overhead and labor costs incurred to the months where production occurred.

F. For months in which Gunawan and Jaya Pari had no purchases of slabs, as a surrogate cost, we used the most recent previous month's average purchase price indexed for inflation. However, we used Gunawan's average purchase price for slab in January 1998 as a surrogate for Jaya Pari's January 1998 slab costs.

G. We revised the scrap offset by indexing the monthly scrap sales revenue before calculating an annual average, and then calculated the scrap offset for each month by indexing the annual average back to each month.

H. We revised Jaya Pari and Gunawan's reported general and administrative (''G&A'') expense and interest expense by indexing each month's nominal G&A expense, interest expense, and cost of sales figure for inflation. We excluded the interest on accounts receivable included in ''other income'' as an offset in the G&A expense calculation.

I. We recalculated Gunawan and Jaya Pari's total indexed foreign exchange gains attributable to accounts payable as a percentage of the indexed cost of sales and multiplied this percentage by the total cost of manufacturing (''COM'') of each product control number.

J. We corrected the error made in calculating total COM based on the petitioners' comments on page 23 of their case brief.

K. We corrected our calculation of the indexed, weight-averaged costs based on the petitioners' comments on pages 23 and 24 of their case brief.

L. We revised Gunawan's reported conversion costs to account for cost differences associated with rolling products of different thicknesses. In making this adjustment, we have applied adverse facts available to Gunawan's reported conversion costs, as explained in detail below.

Gunawan allocated monthly conversion costs to all products based on total production quantities each month. This assignment of conversion costs does not allow for the accurate accounting of cost differences between products. For example, products with different thicknesses require different amounts of processing (*i.e.*, reduction). Critical to the Department's calculation of a dumping margin is the establishment of proper comparisons between prices of similar products sold in Indonesia and the United States. Without accurate difference-in-merchandise (''DIFMER'') cost data for the various products, the Department cannot properly account for the differences in physical characteristics and associated price differences between products sold in Indonesia and the United States. Additionally, without costs that accurately account for cost differences associated with physical differences (*e.g.,* differences in thickness) for each product sold in Indonesia, we cannot conduct a meaningful cost test to evaluate whether products have been sold in Indonesia at less than the COP.

Gunawan responded to Sections B, C and D of the antidumping duty questionnaire on April 26, 1999. On May 21, 1999, the Department issued a supplemental questionnaire requesting further clarification of Gunawan's method of allocating conversion costs. The Department received Gunawan's response to the supplemental questionnaire on June 14, 1999, in which Gunawan indicated that it could not provide more product-specific costs. At verification, we found that there were differences in the amount of reduction required to produce a given thickness of plate. Therefore, we believe that Gunawan could have developed a way of differentiating costs based on the reduction necessary to produce the various thicknesses of plate.

Because Gunawan did not submit the conversion cost data as requested, we have determined that it did not act to the best of its ability. Therefore, application of adverse facts available is warranted in accordance with section 776(b) of the Act (*see* standard for the application of facts available set forth above in ''Facts Available'' section of this notice). However, because the company was otherwise cooperative, we have not drawn the most adverse inference. (*See e.g., Krupp Stahl AG* v. *U.S.*, 822 F. Supp. 789, 793 (Ct. Int'l Trade 1993), which referenced a Court of Appeals' opinion sanctioning the Department's practice to take into account the level of respondents' cooperation; and *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Germany,* 63 FR 8953, 8955 (February 23, 1998).) Specifically, we have relied on the reported control-number-specific direct material costs and variable overhead costs. However, for the fixed overhead costs, we identified the largest expense (depreciation) and allocated the portion attributable to rolling based on reduction time. We first calculated the average reduction required to produce all thicknesses of plate and then compared the average reduction to each thickness reported. We found that one thickness of plate required more reduction on average than all other plates produced. We calculated the percentage difference between the average reduction and the reduction required to produce this thickness of plate and increased the depreciation expense attributable to rolling by this percentage.

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondents' 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 respondents' 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.

We found that, for certain grades of CTL plate, more than 20 percent of Gunawan/Jaya Pari'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 excluded these sales and used the remaining sales as the basis for determining NV if such sales existed, in accordance with section 773(b)(1) of the Act. For those U.S. sales of CTL plate 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.

2. Calculation of CV

We calculated CV using the same methodology as in the preliminary determination, except where we made certain adjustments, as discussed above, and updated cost data based on verification findings and revised our calculation of CV profit based on the petitioners' comments on pages 23 and 24 of their case brief (*see* ''Cost of Production Analysis'' section of this notice and Final Calculation Memorandum, dated December 13, 1999 for further discussion).

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 findings: (1) we corrected the amount reported for commissions for certain Gunawan home market sales; (2) we determined that Gunawan's reported early payment discounts are, in fact, billing adjustments and deducted these reported amounts, where applicable, from the gross unit price; (3) we corrected the amounts reported for advertising expenses for all of Jaya Pari's home market sales; and (4) for one Jaya Pari sales invoice, we corrected the amount reported for inland freight from the plant to the customer (*see* September 16, 1999, Gunawan verification report, September 23, 1999, Jaya Pari verification report, and Comment 2 in the ''Interested Party Comments'' section of this notice for further discussion).

Price-to-CV Comparisons

For price-to-CV comparisons, we applied the same general methodology used in the preliminary determination (*see Preliminary Determination* at 64 FR 41212).

Critical Circumstances

Section 735(a)(3) of the Act provides that if a petitioner alleges critical circumstances, the Department will determine whether there is a reasonable basis to believe or suspect that:

(A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

As noted in the preliminary critical circumstances determination, we are not aware of any existing antidumping order in any country on CTL plate from Indonesia. Therefore, we examined whether there was importer knowledge. In determining whether an importer knew or should have known that the exporter was selling the subject merchandise at less than its fair value and thereby causing material injury, the Department normally considers margins of 25 percent or more for EP sales (and margins of 15 percent or more for CEP sales) sufficient to impute knowledge of dumping (*see Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China,* 62 FR 9160 (February 28, 1997); and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan*, 64 FR 30574 (June 8, 1999) (*Stainless Steel Sheet and Strip in Coils from Japan*)). All respondents in this proceeding have made EP sales to the United States.

The Department's final margin for Gunawan and Jaya Pari exceeds 25 percent (*see* ''Suspension of Liquidation'' section below). Therefore, we continue to determine that importers knew or should have known that Gunawan and Jaya Pari made sales of the subject merchandise at prices below fair value. As to the knowledge of injury from such dumped imports, in the present case, the International Trade Commission (''ITC'') preliminarily determined that there is reasonable indication that the U.S. CTL plate industry is experiencing present material injury. Therefore, we continue to find that the ''importer knowledge of dumping and material injury'' criterion is met with respect to CTL plate from Indonesia.

Because we have found that the first statutory criterion is met with regard to Gunawan and Jaya Pari, we must consider the second statutory criterion: whether imports of the merchandise have been massive over a relatively short period. According to 19 CFR 351.206(h), we consider the following to determine whether imports have been massive over a relatively short period of time: (1) volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by the imports.

When examining volume and value data, the Department typically compares the export volume for equal periods immediately preceding and following the filing of the petition. Under 19 CFR 351.206(h), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we will not consider the imports to have been ''massive.'' The Department examines shipment information submitted by the respondent or import statistics when respondent-specific shipment information is not available.

To determine whether imports of subject merchandise have been massive over a relatively short period, we compared Gunawan/Jaya Pari's export volume for the four months subsequent to the filing of the petition (March-June 1999) to that during the four months prior to the filing of the petition (November 1998–February 1999). These periods were selected based on the Department's practice of using the longest period for which information is available from the month that the petition was submitted through the date of the preliminary determination.

Based on our analysis, we find that the increase in imports was not greater than 15 percent with respect to Gunawan/Jaya Pari, as our verification findings indicate that these companies had no exports of subject merchandise to the United States during the period March-June 1999 (*see* July 9, 1999, submission; page nine of September 16, 1999, Gunawan verification report; and page eight of September 23, 1999, Jaya Pari verification report). Therefore, we do not find critical circumstances with respect to Gunawan/Jaya Pari.

Because the margin we have assigned to Krakatau is 52.42 percent, and thus exceeds 25 percent, we have imputed knowledge of dumping to Krakatau. However, information on the record sufficiently establishes that Krakatau's exports of subject merchandise to the United States have not increased massively since the filing of the petition. U.S. Customs import data indicate that Gunawan/Jaya Pari accounted for the vast majority of imports of subject merchandise into the United States during the POI. Moreover, since the filing of the petition, U.S. Customs import data do not indicate evidence of massive imports of subject merchandise from Indonesia (*see* July 19, 1999, *Memorandum to the File Regarding Import Statistics Used for Preliminary Critical Circumstances Determination*). Thus, we continue to determine that no critical circumstances exist for Krakatau.

Because the margin for all other Indonesian exporters/producers of the subject merchandise is 42.36 percent (*i.e.*, Gunawan/Jaya Pari's margin), and thus exceeds 25 percent, we have imputed knowledge of dumping to ''All Others.'' However, we considered that the increase in imports was not greater than 15 percent with respect to Gunawan/Jaya Pari. We also considered U.S. Customs data on overall imports from Indonesia of the products at issue. Based on our review of Gunawan/Jaya Pari's shipment data and the U.S. Customs import data, we find that imports from all non-investigated exporters (*i.e.*, ''all others'') were also not massive during the relevant comparison periods. Given these factors, the Department determines that there are no critical circumstances with regard to ''all other'' imports of CTL Plate from Indonesia (*see Stainless Steel Sheet and Strip in Coils from Japan* at 64 FR 30585).

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 Gunawan/Jaya Pari 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 Gunawan/Jaya Pari.

Interested Party Comments

Gunawan/Jaya Pari Comments

Comment 1: Application of the High-Inflation Methodology to the POI

The respondents contend that the Department should divide the POI into two separate parts when accounting for the effect of inflation on the COP in order to make a fair comparison between home market costs and home market prices and between home market sales and U.S. sales. Specifically, the respondents state that the IMF wholesale price indices indicate that the Indonesian economy was experiencing hyperinflation only in the first six months of the POI, based on applying the Department's monthly and annual high inflation benchmarks of five and 50 percent, respectively. In support of their position, the respondents cite to the *Preliminary Results of Antidumping Duty Administrative Review and Extension of Final Results of Administrative Review: Gray Portland Cement and Clinker from Mexico*, 64 FR 48778, 48783 (September 8, 1999) (*Cement*). The respondents further note that the inflation rate in Indonesia declined significantly during the fourth quarter of the POI and continued to decline after the POI. The respondents also point out that section 777A(d)(1)(A) of the Act and section 351.414(d)(3) of the Department's regulations grant the Department the authority to use averaging periods less than the POI when NV, EP (or CEP) varies significantly over the POI, and that the Department has exercised its authority in prior antidumping duty cases to apply shorter weighted-average periods to investigations involving a country experiencing high inflation. In support of this position, the respondents cite to numerous cases where the Department split the POI or period of review (''POR'') for various reasons (*see, e.g., Preliminary Results of Antidumping Duty Administrative Review: Certain Pasta from Turkey*, 64 FR 43157, 43158 (August 9, 1999) (*Pasta*); *Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile*, 63 FR 56613, 56620 (October 22, 1998) (*Mushrooms*); *Final Results of Antidumping Duty Administrative Review: Certain Fresh Cut Flowers from Colombia*, 62 FR 53287, 53299 (October 14, 1997) (*Flowers from Colombia*); *Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Colombia*, 60 FR 6980, 6993 (February 6, 1995) (*Roses*); and *Final Determination of Sales at Less Than Fair Value: Salmon from Chile,* 63 FR 31432 (June 9, 1998) (*Salmon*)). Furthermore, the respondents state that the Department has recognized in prior antidumping duty cases that it should not apply the high inflation methodology to the period in which no high inflation exists, and as a result, the Department has separated the POI into high-inflation and non-high-inflation periods. In addition, the respondents claim that the Department has stated in previous high inflation cases that the monthly averaging method is not dispositive when examining the entire POI to determine high inflation. In support of these positions, the respondents cite to the *Final Determination of Sales at Less Than Fair Value: Certain Fresh Cut Flowers from Peru*, 52 FR 7000, 7002 (March 6, 1987) (*Flowers from Peru*); *Final Results of Antidumping Duty Administrative Review: Ferrosilicon from Brazil*, 61 FR 59407, 59408 (November 22, 1996) (*Ferrosilicon*); and *Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 62 FR 51629, 51630 (October 2, 1997) (*Pipe and Tube from Turkey*). Therefore, the respondents claim that the Department has recognized in the past that under certain circumstances, the appropriate high inflation period may not be the entire POI, which applies in this case, as well. Finally, the respondents claim that the Department has in practice determined shorter-than-POI, weighted-average periods to avoid distortive effects on dumping margins. In support of this claim, the respondents cite to the *Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR 30664, 30676 (June 8, 1999) (*Steel Sheet and Strip*); *Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8925 (February 23, 1998) (*SRAMs*); *Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea*, 58 FR 15467, 15476 (March 23, 1993) (*DRAMS*); and *Final Determination of Sales at Less Than Fair Value: Erasable Programable Read Only Memories from Japan*, 51 FR 39680, 39682 (October 30, 1986) (*EPROMs from Japan*).

The petitioners contend that Indonesia did experience high inflation during the second half of the POI, and that even if it had not, the Department's normal practice is to apply its high inflation methodology to the entire POI, not just to a particular segment of that period. The petitioners also maintain that the calculation performed by the respondents to determine whether high inflation existed in the second half of the POI is flawed because it did not include July 1998's inflation figure, nor did it take into account the compounding effects of inflation.

DOC Position: We agree with the petitioners. Based on the respondents' request, we have examined the issue of whether the Department should apply its high-inflation methodology based on whether Indonesia experienced high inflation throughout the POI. As a matter of practice, when the Department uses its high-inflation methodology, we index the costs reported in each POI month, even if inflation was absent during certain portions of the period for which the costs were reported (*i.e.*, the POI), and make sales comparisons on a monthly average basis, rather than on a POI average basis, in order to minimize the effects of inflation on our analysis.

The reason for this methodology is that in order to calculate a weighted-average cost for the POI, all monthly costs during the POI must be restated on an equivalent currency value basis using inflation indices during that period. The POI weighted-average cost is then restated to the currency value of each respective POI month in order to minimize the distortive impact of inflation. The Department's high-inflation methodology does not increase actual costs, but rather, allows the Department to calculate the weighted-average period cost from monthly data that is stated in different currency levels. *See Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 63 FR 35190 (June 29, 1998)

Although the Department's past practice has been to treat an economy as hyperinflationary if the annual inflation rate is greater than 50 percent, since *Pipe and Tube from Turkey* the Department has modified its practice and used a 25 percent per annum inflation rate as a general guide for assessing the impact of inflation on an economy and for determining whether an economy experienced high inflation rather than hyperinflation during the POI or POR (*see Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from South Korea,* 64 FR 137, 139 (January 4, 1999)). The Department's use of this benchmark was illustrated in *Cement* where the Department found that a 16 percent Mexican annual inflation rate did not warrant application of the Department's high-inflation methodology (*see Cement* at 64 FR 48778). In *Pipe and Tube from Turkey,* where the POR extended from May 1, 1993, through April 30, 1994, the Department indicated that it separately examined the inflation rate during two segments of the POR because each segment covered portions of different years and we had to determine what the annual inflation rate was during the POR. In this context, the Department applied its then existing benchmark of 50 percent to determine whether high inflation existed in either 1993 or 1994. The Department did not restrict its examination of the issue to quarters within a year, but instead examined the two years in their entirety, which overlapped the POR and the months in the POR as a whole, in order to determine whether Turkey should be treated as hyperinflationary during the POR. Moreover, in *Pipe and Tube from Turkey,* the Department expressed a clear preference not to break the POR into discrete periods for high-inflation analysis, and stated that its finding in *Flowers from Peru,* made over 10 years ago, where the Department split the POI in its application of inflation methodology, was not a reflection of the Department's more recent practice in conducting inflation analysis. Rather, the Department stated a desire to examine the high-inflation issue by examining and considering the entire review period. The respondents in this case claim that a decline in the inflation rate in the fourth quarter of 1998 and a continuing decline in the inflation rate during the first quarter of 1999 are compelling reasons for departing from this methodology. The Department disagrees that it should perform its high-inflation analysis on a quarterly basis or consider the impact of inflation during periods extending past a POI or POR.

Though the facts in our case are different from those present in *Ferrosilicon,* where the Department determined not to apply its high-inflation methodology, the methodology employed in the present case is consistent with the one in *Ferrosilicon* in that the existence or absence of high inflation during the relevant portion of the review or investigatory period was the single most important contributing factor in determining whether to apply the high-inflation methodology to the POI or POR as a whole. Moreover, the approach taken in *Ferrosilicon* for examining whether high inflation existed during the POR as a whole (*i.e.,* focusing on the annualized rate of inflation over the entire POR or POI rather than quarters or abbreviated time periods) is also consistent with *Pipe and Tube from Turkey,* which, as noted above, is more relevant to our particular situation (*see Ferrosilicon* at 59408).

Unlike in *Flowers from Colombia, Mushrooms, Salmon and Roses,* the issue in our case is not whether to adjust or exclude certain cost items which have a significant impact on home market prices without applying our high-inflation methodology. In the present case, our current practice of applying an annualized benchmark to determine the existence of high inflation during the POI shows that Indonesia experienced high inflation during the entire POI at a level which requires the use of the Department's high-inflation methodology (*see,* Memorandum from the Team to the File, ''Inflation Data Used and Statistical Analysis Performed for Determining Whether High Inflation Was Present During the Period of Investigation,'' dated December 13, 1999). No individual adjustments are necessary beyond those warranted by the application of the Department's high-inflation methodology. Accordingly, we have continued to apply our high inflation methodology to the entire POI.

Since we have determined that inflation existed throughout the POI, there is no need to consider splitting the POI into two averaging periods under 19 CFR 351.414(d)(3).

The effect of currency devaluations resulting from the Asian financial crisis of 1997, as opposed to the existence or absence of inflation, was the principal reason for splitting up the POI in the more Korean case involving *Steel Sheet and Strip.* In that case, the Department determined that the precipitous drop in the value of the home market currency caused significant differences in home market prices and, thus, warranted the POI split. As for the recent Taiwanese case involving *SRAMs,* the Department did use shorter averaging periods to avoid distortive effects due to declining costs and prices. The Department did not, however, apply different methodologies to different parts of the POI. Finally, as is the case with the Department's outdated inflationary analysis and decision made in *Flowers from Peru,* decisions made by the Department in *EPROMs from Japan* are also not a reflection of the Department's current practice with respect to the inflation issue. Accordingly, the Department has continued to apply its high-inflation methodology over the entire POI in this case.

Comment 2: Home Market Early Payment Discount

The petitioners contend that the Department should disallow Gunawan's early payment discount because it constitutes a post-sale price adjustment that is not part of Gunawan's normal business practice. Specifically, the petitioners maintain that information in Gunawan's response indicates that Gunawan grants the discount in question to its home market customers on a discretionary basis, and that the discount percentage is not specified on documentation, or linked to the quantity or value of the sale. Rather, the petitioners allege that the discount is set by Gunawan's sales department on an *ad hoc* basis since the customer is unaware at the time of sale of any terms or conditions it must meet to receive the discount. Finally, the petitioners contend that the Department should disallow this adjustment to NV because Gunawan failed to demonstrate at verification that the discount was part of its normal business practice. In support of their position, the petitioners cite to numerous cases where the Department granted a post-sale price adjustment if it reflected the respondent's normal business practice. *See, e.g., Final Results of Antidumping Duty Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products from Japan,* 64 FR 12951, 12958 (March 16, 1999); *Final Results of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker from Mexico,* 64 FR 13148, 13167 (March 17, 1999); *Final Results of Antidumping Duty Administrative Review: Antifriction Bearings and Parts Thereof from France,* 63 FR 33320, 33327 (June 18, 1998) and 60 FR 10900, 10930 (February 28, 1995); and the *Final Results of Antidumping Duty Administrative Review: Certain Corrosion-Resistant Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada,* 61 FR 13815, 13823 (March 28, 1996).

Gunawan maintains that the Department should continue to allow Gunawan's early payment discount because the Department verified that the *ad hoc* method by which Gunawan grants the discount is its normal business practice. Gunawan also states that the Department examined at verification Gunawan's policy for granting this discount and its reporting of this discount in the sales listing, and found no discrepancies in its reported discount programs. With regard to the administrative cases relied upon by the petitioners, Gunawan points out that this proceeding is an investigation and that the likelihood that it can manipulate its dumping margin by granting the discount in the future is not germane to a LTFV proceeding.

DOC Position: We agree in part with Gunawan. After reviewing data referenced in the Gunawan sales verification report (*i.e.,* verification exhibit 30), we note that the record evidence indicates the post-sale adjustment, referred to as an ''early payment discount'' by both Gunawan and the petitioners, is actually a billing adjustment associated with defective merchandise sold in the home market. Based on the invoices examined at verification, the Department found that the disputed amounts were noted on credit memos which were issued after the sale invoices were sent to home market customers, and that the credits were mostly associated with claims of defective merchandise which was not returned to Gunawan. Therefore, we are treating the amounts at issue as billing adjustments and deducting them, where applicable, from the gross unit price. Finally, the above-referenced administrative cases relied upon by the petitioners have no applicability in this case because, unlike those cases where the issue was whether a respondent granted rebates in its normal course of business, the issue in this proceeding is whether to make a deduction to Gunawan's home market price based on credit memos noting returns of defective merchandise which Gunawan issues to its customers in the normal course of business.

Comment 3: Depreciation Expenses

The petitioners state that the Department should adjust Gunawan's depreciation expenses to account for the effects of inflation and to permit a more appropriate matching of costs and prices based on equivalent currency units. The petitioners argue that Gunawan's reported depreciation expenses are based on the nominal value of assets, since they were last revalued, and reflect neither the inflation experienced in Indonesia since the last revaluation nor the inflation experienced during the POI. The petitioners argue that the Department should adjust the depreciation expenses for the effects of inflation occurring prior to the POI, as well as for the effects of inflation during the POI.

The respondents argue that the Department has already taken into account the effects of inflation by indexing the total amount of reported fixed overhead expenses (*i.e.,* the account in which depreciation expense was recorded) in its cost calculation and, therefore, should not further index for inflation. According to respondents, further indexing the monthly amount of depreciation expense will result in double counting. The respondents argue that the Department's long-standing practice is to rely on data from a respondent's normal books and records if they are prepared in accordance with the generally accepted accounting principles (''GAAP'') of the exporting country.

DOC Position: We agree with the petitioners, in part. The depreciation expense at issue is included in fixed overhead expense. Because the depreciation expense reported for each month was based on fixed assets values recorded in currency levels at the beginning of the POI, it is not enough to index each monthly depreciation expense from that month to the end of the period. Each monthly depreciation expense must be indexed, on a monthly basis, to account for the full change in currency value between the beginning and the end of the POI, before an average COP for the period can be calculated. The reported monthly depreciation expense figures are all stated in the currency level of the first month of the POI and, therefore, must all be indexed for inflation on a monthly basis over the full POI. In this case, the monthly inflation rates during the POI were significant.

We disagree with the petitioners that the nominal monthly depreciation expenses should be adjusted for inflation that occurred prior to the POI. We note that one of the two collapsed respondents revalued their assets during the last quarter of 1998 and the other revalued its assets in 1996. Inflation in Indonesia since this pre-POI revaluation has not been significant. Thus, we do not consider it appropriate to adjust the pre-POI fixed asset valuations as recorded in their normal books and records. For the final determination, we have indexed the monthly depreciation expense to account for the high inflation during, but not prior to, the POI.

Comment 4: First-Day Verification Corrections

The petitioners argue that the Department should, pursuant to 19 CFR 351.301(b), reject the undisclosed and untimely major modifications contained in Gunawan's August 24, 1999 and Jaya Pari's September 1, 1999 submissions. The petitioners argue that it is the Department's longstanding policy not to accept the submission of new information at verification unless: (1) The need for that information was not evident previously, (2) that information makes minor corrections to information already on the record, or (3) that information corroborates, supports, or clarifies information already on the record. According to the petitioners, the corrections submitted by Gunawan and Jaya Pari on the first day of verification significantly affect the financial expense calculation and the foreign exchange gains and losses on accounts payable. The petitioners claim that these ''major'' modifications cannot be characterized as ''minor corrections'' and, therefore, should be rejected as new information.

The respondents argue that the Department should reject the petitioners' claim that the corrections submitted by Gunawan and Jaya Pari at verification constitute an untimely submission of new factual information. The respondents argue that these minor corrections were made timely on the first day of verification and included worksheets showing the effects of the corrections which the Department verified. The respondents argue that the corrections were minor in nature and significance, and were related only to exchange gains and losses, which represent a minor part of the total reported costs. The respondents argue that these corrections went in both positive and negative directions, which in turn had an insignificant impact on the margin calculation, and, therefore, the Department should include these corrections in its calculation of the respondents' dumping margin in the final determination.

DOC Position: We agree with the respondents that the corrections presented on the first day of verification were minor and were of the type typically identified by the respondents during preparation for verification. These corrections were minor in that they affected only specific accounts, did not change the reporting methodology, and corroborated, supported, and clarified information already on the record. Therefore, we have included the corrections for purposes of the final determination.

Comment 5: Slab Costs

The petitioners argue that the Department should adjust the respondents' reported slab costs. The petitioners argue that where Gunawan and Jaya Pari had no purchases of slabs in a given month, the Department should construct a current monthly cost by using the most recent preceding month's cost, adjusted for the effects of inflation, instead of the unadjusted slab costs reported by the respondents. In addition, the petitioners disagree with the respondents' claim that all slab costs were denominated in U.S. dollars. According to the petitioners, it is not clear from the record how much of the slab purchases were made in U.S. dollars or Indonesian rupiah. The petitioners argue that as a surrogate for Jaya Pari's January 1998 mild slab costs the Department should use Gunawan's January 1998 mild slab purchases, because Gunawan's average January purchase price is more representative of January slab costs than is the price reported by Jaya Pari, a price from the previous year.

The respondents argue that the Department should not adjust the purchase price of slab for inflation, but instead use the slab costs as reported. The respondents are opposed to the petitioners' argument that the respondents' reported slab costs for a month in which there were no purchases should be adjusted by the Indonesian inflation indices. The respondents argue that when they produce subject merchandise in a month in which there are no purchases, they are consuming slab from inventory, which was purchased in previous months. Therefore, they argue that the cost of slab in any given month was equal to the slab cost of the previous month, irrespective of inflation in Indonesia because they did not incur any additional acquisition costs for these slabs. Accordingly, the Department should not revalue the slab costs for those months in which there were no purchases.

The respondents also argue that the Department should not use Gunawan's January 1998 mild slab purchase price as a surrogate for Jaya Pari's January 1998 mild slab costs as suggested by the petitioners. The respondents state that they purchased all of their material inputs in U.S. dollars from sources outside of Indonesia and there were no significant price increases during the POI. The respondents argue that because the acquisition cost of slabs in U.S. dollars is not affected by Indonesian market conditions and is also not affected by inflation, no adjustments should be made to the slab purchase price.

Lastly, the respondents argue that since the IMF's wholesale price indices show that Indonesia has not had high inflation subsequent to July 1998, the Department's high-inflation methodology should not be applied to costs during the period from July through December 1998.

DOC Position: We agree with the petitioners that replacement cost (*i.e.,* the purchase price for the current month) should be used to value slabs for Gunawan and Jaya Pari. Moreover, we agree that for those months in which there were no slab purchases, the preceding month's purchase price, adjusted for the effects of inflation, should be used. In cases where the respondent experiences inflation in the comparison market during the POI, the Department requires the respondent to report current costs for the calculation of COP and CV. This methodology entails valuing any materials used to produce the subject merchandise at the average purchase price of those materials during the month of consumption (*i.e.,* the normal inventory value of consumed raw materials is replaced by the average monthly purchase price for those materials).

We disagree with the respondents that all purchases of slabs were made in U.S. dollars. In fact, some purchases, and all of the miscellaneous acquisition fees, were made in rupiah. Moreover, we disagree that when slab purchases are made in U.S. dollars the book value is not affected by inflation. This is because the U.S. dollar-denominated purchase price is converted to rupiah in the month of purchase. Since the company was experiencing high inflation during the POI, its currency was losing value in relation to the U.S. dollar and, therefore, in Indonesian rupiah terms the slabs were increasing in price.

We also agree with the petitioners that it is more appropriate to use Gunawan's weighted-average, per-unit purchase price in January 1998 for mild slab as a surrogate for Jaya Pari's January 1998 mild slab costs. Gunawan's average January purchase price is more representative of January slab costs than the price Jaya Pari paid months ago. Simply indexing the price paid in the previous period would only account for increases in the purchase price due to inflation, but would not reflect other market-based pressures on slab prices. We note further that Jaya Pari has been collapsed with Gunawan as a single respondent for margin calculation purposes, and also that it purchased slab from Gunawan during the POI. Therefore, we find that it is appropriate to used Gunawan's slab cost as a surrogate for Jaya Pari's slab cost in January 1998.

Finally, we disagree with the respondents' argument that the Department's high-inflation methodology should not be applied to the period from July through December 1998. First, we note that the IMF's wholesale price indices show that Indonesia continued to experience inflation through September 1998. Second, our practice is to use the high-inflation methodology for the entire POI if a country experiences a significant level of inflation throughout that period, as was the case in Indonesia. The Department's high-inflation methodology does not increase costs, but rather, allows the Department to calculate the weighted-average period cost from monthly data that is stated in different currency levels. Therefore, we have continued to apply the high-inflation methodology in our calculation of the POI costs.

Comment 6: G&A Expenses

The petitioners argue that the Department should exclude Gunawan's ''other income,'' resulting from interest on accounts receivable, as an offset in the calculation of its G&A expense factor. The petitioners argue that this interest on accounts receivable was from a company that did not pay its invoices on time and is not related to Gunawan's production operations.

The respondents argue that the Department should not exclude interest income from accounts receivable, which was included in ''other income,'' from the calculation of G&A expenses because it is directly related to subject merchandise. Alternatively, the respondents argue that this interest income should be deducted from the respondents' indirect selling expenses.

DOC Position: We agree with the petitioners that the interest on accounts receivable, which was included in ''other income,'' should not be used as an offset in the G&A expense calculation. Interest income earned on accounts receivable is treated as an adjustment to the selling price. The Department's standard questionnaire directs a respondent to report such interest income in a separate field on the sales database in order to allow for the adjustment to the selling price. Accordingly, we have disallowed this interest income on accounts receivable as an offset to G&A expense. We do agree with the respondents that the interest income should be deducted from the respondents' indirect selling expenses and have done so for the final margin calculation.

Comment 7: Scrap Sales

The petitioners argue that because of the high inflation experienced in Indonesia, the Department should first index the monthly scrap sales revenue before calculating an annual average.

The respondents agree that the Department should first index the monthly amounts of scrap before calculating an average, but argue that the indexing should be limited to data for the period from January through June 1998.

DOC Position: We agree with the petitioners that because of the high inflation experienced in Indonesia, we should first index the monthly scrap sales revenue before calculating an annual average. Gunawan calculated the scrap offset by dividing the total scrap sales revenue for the year by the total quantity of plate produced during the year. Since the monthly scrap sales revenue that was summarized to obtain the total scrap sales revenue was in different currency levels, we have first indexed the monthly amounts using the Wholesale Price Index as reported in the *International Financial Statistics* before calculating an annual average. We then calculated the scrap offset for each month by indexing the annual average back to each month. Finally, we disagree with the respondents concerning their argument that the indexing should be limited to the period from January through June 1998, consistent with our decision to apply high-inflation methodology to the entire POI. *See* DOC Position to Comment 1 above for further discussion.

Comment 8: Foreign Exchange Loss on Accounts Payable

The respondents argue that the Department should not include the exchange losses on accounts payable attributable to the purchase of slab in the calculation of the COP. The respondents argue that, because costs included in CV are eventually converted into U.S. dollars, the Department should base slab purchase costs on the U.S. dollar-denominated purchase price to avoid the conversion from U.S. dollars to Indonesian rupiah and back to U.S. dollars which creates a loss that does not exist in dollar terms. The respondents argue that the exchange loss on accounts payable arose solely from different exchange rates used between the date of recording purchases in their books and the date of payment. The respondents also argue that the Department should exclude this exchange loss since it was only a ''book'' loss which did not add to the real COP.

In addition to the above argument, the respondents state that by indexing the slab purchase price and then including the exchange loss on accounts payable from the purchase of slab, the Department has double counted costs in the calculation of the COP. The respondents state that they are being made to record exchange losses in their books due to the Indonesian rupiah depreciating against the U.S. dollar which, in turn, was due to inflation in the Indonesian economy.

The petitioners argue that the Department should continue to include the respondents' foreign exchange losses on accounts payable in the calculation of COP and CV. They argue that the respondents must convert their slab costs into Indonesian rupiah since their normal books and records are maintained in Indonesian rupiah, and as a result of doing so, they realize exchange gains and losses on accounts payable. The petitioners state that these foreign exchange gains and losses on accounts payable are a result of the Indonesian rupiah depreciating between the time slab is purchased and the time payment is made. The petitioners claim that this is a real economic loss, which is recognized by the respondent and is recorded in their financial accounting system. The petitioners argue that the conversion of these Indonesian rupiah costs back into U.S. dollars for purposes of calculating CV does not create the loss, it is simply a convention of the dumping analysis. In addition, the petitioners argue that the Department has consistently held that foreign exchange losses on accounts payable must be included in costs. *See Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod From Trinidad & Tobago,* 63 FR 9177, 9182 (February 24, 1998) (*Steel Wire Rod*).

DOC Position: We disagree with the respondents. Foreign exchange losses realized in connection with accounts payable should be included in the COP and CV calculations. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Korea,* 64 FR 17342 (April 9, 1999) and *Steel Wire Rod* at 63 FR 9182. The foreign exchange losses on accounts payable were a result of the Indonesian rupiah depreciating between the time the slab was purchased and the time the payment was made. In simple terms, when the payment is made it takes more Indonesian rupiah than the original amount recorded for the purchase. This is a real economic loss, which was recognized by the respondents and was recorded in their financial accounting system. The Department includes these losses in the COM because they are the direct result of purchasing inputs for the manufacturing process. We also disagree with the respondents' argument that if the slabs were purchased in U.S. dollars and paid out of the company's U.S. dollar reserves, there is no exchange loss. Even if the payment of slabs were made from U.S. dollar reserves, there is still an exchange loss on the payment of the slabs, because the originally agreed upon price in rupiah terms has increased. We further note that any exchange gain on U.S. dollar reserves would be included by the Department in the calculation of financial expense.

Moreover, we disagree with the respondents' assertion that the Department has double counted costs by both including the exchange losses and indexing the monthly slab costs in its calculation of the COP and CV. The indexing simply allows the Department to calculate an average period cost from monthly amounts that are denominated in different currency levels. The average cost is then restated in currency levels for each month in which a sale took place. The inclusion of the foreign exchange loss recognizes that the respondent paid a higher amount for the slab than originally recorded.

Comment 9: Foreign Exchange Gains on Accounts Receivable

The respondents argue that the Department should include the foreign exchange gains from accounts receivable as an offset to the foreign exchange loss from accounts payable. The respondents argue that, by excluding this offset amount, the Department departed from the objectives and principles of GAAP, which is to ensure that each company fairly presents its financial position, operating position and any change to its financial position. The respondents state that in their normal financial practices, the companies do not manage specific accounts, but instead manage their net exposed position. Therefore, any change in relative currency values will be offset with no cost to the company. The respondents argue that if the gains on accounts receivable were excluded, a distortion in the real financial position of the company would occur because the cost of exchange losses actually suffered would be overstated.

The petitioners argue that the Department should not include foreign exchange gains from accounts receivable in the calculation of the respondents' costs. They state that it is the Department's practice to include foreign exchange gains and losses on financial assets and liabilities in the COP and CV calculations, provided that the gains and losses are related to the company's production operations. Since the foreign exchange gains and losses incurred on accounts receivable are related to sales operations, rather than to production, the petitioners maintain these amounts should not be included in the calculation of COP and CV. *See Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand,* 63 FR 7392, 7401 (February 13, 1998) and *Steel Wire Rod* at 63 FR 9182.

DOC Position: We agree with the petitioners that foreign exchange gains and losses arising from sales transactions should not be included in the calculation of COP and CV. The Department's longstanding practice is to exclude exchange gains and losses on accounts receivable. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe and Tube from Mexico,* 62 FR 37014,37026 (July 10, 1997) (Comment 31) (where the Department did not include exchange gains and losses on accounts receivables, because these gains and losses related to selling activities rather than production activities); and *Pipe and Tube from Turkey* at 62 FR 51629–01 (October 2, 1997). The Department normally includes in its calculation of COP and CV foreign exchange gains and losses resulting from transactions related to a company's manufacturing operations (*e.g.,* purchases of inputs). *See, e.g., Final Determination of Sales Less Than Fair Value: Polyethylene Tenephthalate Film, Sheet, and Strip From the Republic of Korea,* 56 FR 16305, 16313 (April 22, 1991). We do not consider foreign exchange gains and losses arising from sales transactions to relate to manufacturing activities of a company. Accordingly, for the final determination we included in COP and CV exchange gains and losses arising from purchase transactions (accounts payables) (*see* Comment 8), but disallowed exchange gains and losses arising from sales transactions.

Krakatau Comments

Comment 1: Application of Facts Available

Krakatau maintains that the Department's use of facts available in its case violates Articles 2.2.1.1 and 6.8 of the Antidumping Duty Agreement of the World Trade Organization because the Department could have used its questionnaire response to arrive at a calculated margin for Krakatau without undue difficulties. Krakatau further maintains that the Department's insistence that Krakatau provide costs on a control-number-specific basis based on its cost records and Krakatau's inability to provide such costs are no justification for rejecting Krakatau's response and applying facts available.

The petitioners maintain that the Department should assign Krakatau the higher of the highest dumping margin alleged in the petition or calculated in the final determination, rather than the simple average of the dumping margins alleged in the petition, because Krakatau has not provided an adequate questionnaire response. The petitioners argue that if the Department assigns Krakatau the simple average of the petition dumping margins, Krakatau might receive a lower rate than it might otherwise have received if it had cooperated, thus rewarding Krakatau for not providing complete and accurate information in a timely manner.

DOC Position: We agree with the petitioners. We did not request that Krakatau provide cost and sales information that other respondents in numerous antidumping duty proceedings have not been able to provide, without undue hardship, in response to the Department's antidumping duty questionnaire. Furthermore, Krakatau was given significant guidance and assistance by the Department throughout this investigation, but was unable to provide the Department with an adequate response that could be verified and used in the final determination. Consequently, the Department has no choice but to continue to resort to facts available with respect to Krakatau in the final determination as explained in detail below.

We provided Krakatau with numerous opportunities and guidance throughout this proceeding to enable it to submit its cost and sales data on a control-number-specific basis, as requested by the Department's questionnaire, for purposes of calculating a margin for Krakatau based on its own data. Despite the Department's numerous attempts to assist Krakatau, Krakatau failed to provide critical information needed for calculating a margin, thereby rendering its information severely deficient and unusable. Specifically, prior to the preliminary determination, the Department issued Krakatau a number of instructional letters, including a second supplemental questionnaire which was explicit regarding the information the Department needed from Krakatau in order to further consider its response for verification and the final determination (*see* July 8, 1999, letter from the Department to Krakatau). In the July 8, 1999, letter, the Department requested for each sales control number, production costs and sales expenses unique to the control number, along with worksheets showing how Krakatau arrived at its calculations for the requested costs and sales expenses. Moreover, we requested Krakatau to provide the costs for each control number on a monthly basis since evidence suggested that Indonesia experienced high inflation throughout the POI. In addition, the July 8, 1999, letter provided Krakatau with step-by-step instructions for submitting the requested information noted above. The July 8, 1999, letter also stated that if Krakatau could not establish a unique cost for each product, it must describe in detail the reason it could not provide such information. In summary, this letter was designed to assist Krakatau and give Krakatau one final opportunity to comply with the Department's reporting requirements because the Department was fully aware that Krakatau was a *pro se* company and had requested assistance in a timely manner under section 782(c)(1) of the Act. Having received the Department's assistance in this regard under section 782(c)(2) of the Act, the ultimate burden was on Krakatau to supply the Department with the requested information.

In its response to the Department's July 8, 1999, letter, Krakatau (1) did not report control-number-specific, monthly costs (critical for making fair value comparisons); (2) did not provide the requested worksheets necessary for determining whether it properly reported its sales expenses on a per-unit basis; and (3) did not explain in detail why it was not able to provide the sales and cost information the Department routinely requests and receives from respondents in other antidumping duty cases. Furthermore, Krakatau offered no alternative methodologies for meeting the Department's request for information given its alleged inability to provide such information in the manner requested by the Department. Rather, Krakatau continued to report a standard sales expense amount irrespective of the POI month for each control number reported in its home market and U.S. sales listings without showing or explaining its calculation methodology, and one standard production cost for each POI month which did not differentiate between control numbers. With these significant deficiencies still present in Krakatau's July 23, 1999, supplemental response, we notified Krakatau on July 27, 1999, that the Department was unable to conduct a meaningful verification of its response and that the supplemental information Krakatau submitted on July 23, along with the information previously submitted on June 25, 1999, did not provide the Department with an appropriate basis on which to calculate an antidumping duty margin for Krakatau in the final determination (*see* July 27, 1999, letter from the Department to Krakatau).

Because Krakatau did not provide an adequate response that the Department could verify and use in the final determination, despite numerous opportunities and assistance afforded to it by the Department, the Department does not consider Krakatau to have cooperated to the best of its ability in this proceeding. Therefore, the Department has relied on adverse facts available in accordance with section 776(b) of the Act in making its final determination with respect to Krakatau. Accordingly, the Department has assigned Krakatau the highest dumping margin alleged in the petition, which is higher than the margin calculated for Gunawan/Jaya Pari. *See* also ''Facts Available'' section of this notice.

Comment 2: Exclusion From Investigation

Krakatau claims that its negligible exports of subject merchandise to the U.S. market during the POI could not possibly cause or threaten material injury to the domestic industry. Therefore, Krakatau maintains that the Department should not impose antidumping duties on Krakatau's U.S. exports of the subject merchandise.

The petitioners did not comment on this issue.

DOC Position: We disagree with Krakatau. The ITC, not the Department, determines whether imports of the subject merchandise from Indonesia have caused or threaten material injury to the domestic industry. Therefore, Krakatau's argument is not one in which the Department has jurisdiction to address. The Department determines whether dumping exists. If we find dumping and the ITC finds material injury, we must impose antidumping duties.

Comment 3: Adequacy of Questionnaire Response

Krakatau claims that it did not know how to report its information in the format requested by the Department's original and supplemental questionnaires because it was unfamiliar with the requirements of the U.S. antidumping duty law and because it could not afford the services of a consultant to prepare its response due to the adverse impact of the Indonesian economic crisis on its operations. Instead, Krakatau points out that it used its own resources to respond to the Department's questionnaires to the best of its ability. In addition, Krakatau alleges that the Department's guidance was inadequate in terms of assisting it in reporting its cost and sales information in the format requested by the Department. Therefore, Krakatau maintains that the Department should not resort to facts available with respect to Krakatau because Krakatau was unable to provide the Department with certain requested information (*i.e.*, assigning product control numbers and reporting control number-specific costs) for which Krakatau did not maintain or record in its accounting records.

The petitioners did not comment on this issue.

DOC Position: We disagree with Krakatau. As discussed in the Department's position to Comment 1, the Department provided Krakatau with numerous opportunities to submit in a timely manner critical cost and sales information in the format requested in the Department's antidumping duty questionnaire. In the final supplemental questionnaire the Department issued to Krakatau on July 8, 1999, the Department provided Krakatau with the actual calculation steps it needed to follow in order to report its sales expenses in the manner requested by the antidumping duty questionnaire. Additionally, in the supplemental questionnaire, the Department outlined for Krakatau how it could comply with the Department's request to report monthly, control-number-specific cost data based on Krakatau's description of its own cost records. Krakatau failed to provide the requested information despite the Department's assistance efforts. In addition to these detailed explanations and guidelines, we took the unusual step of sending a Department official to Jakarta to answer any questions Krakatau staff had concerning the contents of the Department's questionnaires. Having received this assistance, the burden was on Krakatau to provide the requested information. It did not. Therefore, the Department has no alternative but to resort to adverse facts available in Krakatau's case. (*See* ''Comment 1 above and ''Facts Available'' section of this notice for discussion of adverse facts available rate assigned to Krakatau.)

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 subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final 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
Gunawan/Jaya Pari	42.36
PT Krakatau Steel	52.42
All Others	42.36

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 issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33232 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–837]

Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea

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

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Tipten Troidl, Office of CVD/AD Enforcement VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2786.

Final Determination: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain cut-to-length carbon-quality steel plate from the Republic of Korea. For information on the countervailing duty rates, see the ''Suspension of Liquidation'' section of this notice.

SUPPLEMENTARY INFORMATION:

Petitioners

The petition in this investigation was filed by Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation, Gulf States Steel, Inc., IPSCO Steel Inc., Tuscaloosa Steel Corporation, and the United Steelworkers of America (petitioners).

Case History

Since the publication of our preliminary determination in this investigation on July 26, 1999 (*Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 64 FR 40445 *(Preliminary Determination)*), the following events have occurred:

On September 13, 1999, we issued supplemental questionnaires to Pohang Iron & Steel Co., Ltd. (POSCO), Dongkuk Steel Mill Co., Ltd. (DSM), and the Government of Korea (GOK). We received the respondents' questionnaire responses on October 5, 1999. We conducted verification of the countervailing duty questionnaire responses from October 25 through November 9, 1999. Because the final determination of this countervailing duty investigation was aligned with the final antidumping duty determination (*see* 64 FR 40416), and the final antidumping duty determination was postponed (*see* 64 FR 46341), the Department on August 25, 1999, extended the final determination of this countervailing duty investigation until no later than December 13, 1999 (*see* 64 FR 40416). On November 19, 1999, we issued to all parties the verification reports for POSCO, DSM, and the Meetings with Banking Experts in Korea. We later issued on November 23, 1999, the verification report for the GOK. Petitioners and respondents filed case briefs on November 29, 1999. Rebuttal briefs were submitted to the Department by petitioners and respondents on December 3, 1999. A public hearing on the case was held on December 6, 1999.

On November 23, 1999, we discontinued the suspension of liquidation of all entries of the subject merchandise entered or withdrawn from warehouse for consumption on or after that date, pursuant to section 703(d) of the Act. *See* the ''Suspension of Liquidation'' section of this notice.

Scope of Investigation

The products covered by this scope are certain hot-rolled carbon-quality steel: (1) universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils).

Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or

0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings:
7208.40.3030, 7208.40.3060,
7208.51.0030, 7208.51.0045,
7208.51.0060, 7208.52.0000,
7208.53.0000, 7208.90.0000,
7210.70.3000, 7210.90.9000,
7211.13.0000, 7211.14.0030,
7211.14.0045, 7211.90.0000,
7212.40.1000, 7212.40.5000,
7212.50.0000, 7225.40.3050,
7225.40.7000, 7225.50.6000,
7225.99.0090, 7226.91.5000,
7226.91.7000, 7226.91.8000,
7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

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 (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations as codified at 19 CFR Part 351 (1998) and to the substantive countervailing duty regulations published in the **Federal Register** on November 25, 1998 (63 FR 65348) (CVD Regulations).

Injury Test

Because the Republic of Korea 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 Korea materially injure, or threaten material injury to, a U.S. industry. On April 8, 1999, the ITC published its preliminary 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 Korea of the subject merchandise (*see Certain Cut-to-Length Steel Plate From the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia; Determinations,* 64 FR 17198 (April 8, 1999)).

Period of Investigation

The period of investigation for which we are measuring subsidies (the POI) is calendar year 1998.

Subsidies Valuation Information

Allocation Period

Section 351.524(d)(2) of the CVD Regulations states that we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System and updated by the Department of Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation, and the party can establish that the difference between the company-specific or country-wide AUL for the industry under investigation is significant.

In this investigation, no party to the proceeding has claimed that the AUL listed in the IRS tables does not reasonably reflect the AUL of the renewable physical assets for the firm or industry under investigation. Therefore, according to section 351.524(d)(2) of the CVD Regulations, we have allocated POSCO and DSM's non-recurring subsidies over 15 years, the AUL listed in the IRS tables for the steel industry.

Benchmarks for Long-term Loans and Discount Rates

During the POI, POSCO and DSM had a number of won-denominated and foreign currency-denominated long-term loans outstanding which the company received from government-owned banks, Korean commercial banks, overseas banks, and foreign banks with branches in Korea. A number of these loans were received prior to 1992. In the 1993 investigation of *Steel Products from Korea*,[1] the Department determined that the GOK influenced the practices of lending institutions in Korea and controlled access to overseas foreign currency loans through 1991. *See Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products from Korea,* 58 FR 37328, 37338 (July 9, 1993) (*Steel Products from Korea*), and the ''Direction of Credit'' section below. In that investigation, we determined that the best indicator of a market rate for long-term loans in Korea was the three-year corporate bond rate on the secondary market. Therefore, in the final determination of this investigation, we used the three-year corporate bond rate on the secondary market as our benchmark to calculate the benefits which the respondent companies received from direct foreign currency loans and domestic foreign currency loans obtained prior to 1992, and still outstanding during the POI.

In *Stainless Steel Plate* and *Stainless Steel Sheet and Strip*,[2] the Department, for the first time, examined the GOK's direction of credit policies for the period 1992 through 1997. Based on new information gathered during the course of those investigations, the Department determined that the GOK controlled directly or indirectly the lending practices of most sources of credit in Korea between 1992 and 1997. In the current investigation, we determine that the GOK still exercised

[1] On October 1, 1999, the United States Court of Appeals for the Circuit (CAFC) issued a decision regarding *Steel Products from Korea. See AK Steel Corp.* v. *United States,* 192F.3d (*AK Steel*). The Department has not received specific instructions from the Court on how this decision should be implemented. However, our review of the decision indicates that the CAFC found that there was not sufficient evidence on the record of *Steel Products from Korea* to determine that the GOK provided credit directly to the Korean steel industry. In this investigation, we have additional information on the record indicating that the GOK's direction of credit prior to 1992 provided a countervailable benefit to the Korean steel industry. Therefore, the selection of long-term benchmarks cited to in *Steel Products from Korea* is appropriate for this current investigation. For further information on direction of credit prior to 1992, see the ''Direction of Credit'' section of this notice.

[2] *See Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea,* 64 FR 15530, 15532 (March 31, 1999) (*Stainless Steel Plate*), and *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea,* 64 FR 30636, 39641 (June 8, 1999) (*Stainless Steel Sheet and Strip*).

substantial control over lending institutions in Korea during the POI.

Based on our findings on this issue in prior investigations, as well as in the instant investigation, discussed below in the ''Direction of Credit'' section of this notice, we are using the following benchmarks to calculate respondents' long-term loans obtained in the years 1992 through 1998. First, for countervailable, foreign-currency denominated long-term loans, we used, where available, the company-specific weighted-average U.S. dollar-denominated interest rates on the companies' loans from foreign bank branches in Korea. However, certain companies had foreign currency loans denominated in a currency other than U.S. dollars but did not have the same type of currency loans from foreign bank branches in Korea. Because we were unable to find a similar foreign-currency denominated loan benchmark within Korea, we used foreign-currency interest rates as reported in the *International Financial Statistics,* a publication of the IMF. Second, for countervailable won-denominated long-term loans, where available, we used the company-specific corporate bond rate on the companies' public and private bonds. We note that this benchmark is based on the decision in *Stainless Steel Plate,* 64 FR at 15531, in which we determined that the GOK did not control the Korean domestic bond market after 1991, and that domestic bonds may serve as an appropriate benchmark interest rate. Where unavailable, we used the national average of the yields on three-year corporate bonds as reported by the Bank of Korea (BOK).

We are also using the three-year company-specific corporate bond rate as the discount rate to determine the benefit from non-recurring subsidies received between 1992 and 1998.

Benchmarks for Short-Term Financing

For those programs which require the application of a short-term interest rate benchmark, we used as our benchmark a company-specific weighted-average interest rate for commercial won-denominated loans for the POI. Each respondent provided its respective company-specific, short-term commercial interest rate to the Department.

Treatment of Subsidies Received by Trading Companies

During the POI, POSCO exported the subject merchandise to the United States through three trading companies, POSTEEL, Hyosung, and Sunkyong. DSM exported through one trading company, DKI. POSTEEL is affiliated with POSCO, and DKI is affiliated with DSM within the meaning of section 771(33)(E) of the Act because as of December 31, 1998, POSCO owned 95.8 percent of POSTEEL's shares, and DSM owned 51.3 percent of DKI shares. The other trading companies are not affiliated with either POSCO or DSM. We required that the trading companies provide responses to the Department with respect to the export subsidies under investigation. Responses were required from the trading companies because the subject merchandise may be subsidized by means of subsidies provided to both the producer and the exporter. All subsidies conferred on the production and exportation of subject merchandise benefit the subject merchandise even if it is exported to the United States by an unaffiliated trading company rather than by the producer itself. Therefore, the Department calculates countervailable subsidy rates on the subject merchandise by cumulating subsidies provided to the producer, with those provided to the exporter. *See* 19 CFR 351.525.

Under section 351.107 of the Department's Regulations, when the subject merchandise is exported to the United States by a company that is not the producer of the merchandise, the Department may establish a ''combination'' rate for each combination of an exporter and supplying producer. However, as noted in the ''Explanation of the Final Rules'' (the Preamble), there may be situations in which it is not appropriate or practicable to establish combination rates when the subject merchandise is exported by a trading company. In such situations, the Department will make exceptions to its combination rate approach on a case-by-case basis. *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27303 (May 19, 1997).

In this investigation, we have determined that it is not appropriate to establish combination rates. This determination is based on two main facts: first, the majority of the subsidies conferred upon the subject merchandise were received by the producers. Second, the difference in the levels of subsidies conferred upon the subject merchandise among the individual trading companies is insignificant. Therefore, combination rates would serve no practical purpose because the calculated subsidy rate for POSCO/POSTEEL or POSCO/Sunkyong or POSCO and any of the other trading companies would effectively be the same rate. For these reasons, we are not calculating combination rates in this investigation. Instead, we have only calculated one rate for each producer of the subject merchandise, all of which is produced by either POSCO or DSM.

To include the subsidies received by the trading companies, which are conferred upon the export of the subject merchandise, in the calculated *ad valorem* subsidy rate, we used the following methodology. For each of the four trading companies, we calculated the benefit attributable to the subject merchandise and factored that amount into the calculated subsidy rate for the producer. In each case, we determined the benefit received by the trading companies for each export subsidy and weight-averaged the benefit amounts by the relative share of each trading company's value of exports of the subject merchandise to the United States. This calculated *ad valorem* subsidy was then added to the subsidy calculated for either POSCO or DSM. Thus, for each of the programs below, the listed ad valorem subsidy rate includes the countervailable subsidies received by both the trading companies and either POSCO or DSM.

I. Programs Determined To Be Countervailable

A. The GOK's Direction of Credit Policies

1. The GOK's Credit Policies Through 1991

As noted above in the ''Subsidies Valuation'' section of this notice, on October 1, 1999, the CAFC issued a decision regarding *Steel Products from Korea. See AK Steel.* The Department has not received specific instructions from the Court as to how this decision should be implemented. However, our review of the decision indicates that the CAFC found that there was not sufficient evidence on the record of *Steel Products from Korea* to determine that the GOK provided credit directly to the Korean steel industry. Since the time of the final determination of *Steel Products from Korea* the URAA was enacted and the Department developed and codified new substantive countervailing duty regulations. Under the new statute and regulations and considering the new information that was not on the record of *Steel Products from Korea*, we determine that all loans disbursed to respondent companies through 1991 are countervailable. For a discussion of this new information, please see Comments 1 and 2 in the ''Interested Party Comments'' section of the notice. The provision of long-term loans in Korea through 1991 results in a financial contribution within the meaning of section 771(5)(D)(i) of the Act. In accordance with section 771(5)(E)(ii) of the Act, a benefit has been conferred on the recipient to the extent that the regulated loans are provided at interest rates less than the benchmark rates described under the ''Subsidies Valuation Information'' section, above.

POSCO and DSM were the only producers of the subject merchandise, and both companies received long-term loans prior to 1992 that were still outstanding during the POI. To determine the benefit from the regulated loans, we applied the long-term loan methodology provided for in section 351.505 of the CVD Regulations. We then summed the benefit amounts from the loans attributable to the POI and divided the total benefit by each company's respective total sales. On this basis, we determine the net countervailable subsidy to be 0.12 percent *ad valorem* for POSCO, and 0.04 percent *ad valorem* for DSM.

In the preliminary determination, we stated that the long-term KExim Bank loans are regulated. Accordingly, these loans are countervailable as directed credit, and we included these long-term loans in POSCO's benefit calculations for directed credit. In the preliminary determination, we concluded that the loans provided to POSCO from the KExim Bank were export subsidies, and thus divided the benefit amounts from the loans attributable to the POI by the company's export sales. During verification, we found that these loans were provided under the Overseas Resource Development Program, and thus were not provided to POSCO based upon its export performance. Therefore, for the purposes of this final determination, we have attributed the benefit conferred from the KExim Bank loans over POSCO's total sales.

2. The GOK's Credit Policies From 1992 Through 1998

In the *Stainless Steel Plate* and *Stainless Steel Sheet and Strip* investigations, the Department determined that the GOK continued to control directly and indirectly the lending practices of most sources of credit in Korea through 1997.[3] The Department also determined that the GOK's regulated credit from domestic commercial banks and government-controlled banks such as the Korea Development Bank (KDB) was specific to the steel industry. This credit conferred a benefit on the producers/exporters of the subject merchandise to the extent that the interest rates on these loans were less than the interest rates on comparable commercial loans. *See* section 771(5)(ii) of the Act. *See* also *Stainless Steel Plate,* 64 FR 15530, 15533, and *Stainless Steel Sheet and Strip,* 64 FR 30636, 30642.

We provided the GOK with the opportunity to present new factual information concerning the government's credit policies during the 1992 through 1997 period, which we would consider along with our finding in the prior investigations. The GOK did not provide new factual information that would lead us to change our determination in *Stainless Steel Plate and Stainless Steel Sheet and Strip.* Therefore, we continue to find lending from domestic banks and from government-owned banks such as the KDB to be countervailable.

In the instant investigation, we examined whether the GOK continued to control or influence directly or indirectly, the lending practices of sources of credit in Korea in 1998, in light of our prior finding that the GOK controlled and directed credit provided by domestic banks and government-owned banks during the period 1992 through 1997. The GOK asserted that it does not provide direction or guidance to Korean financial institutions in the allocation of loans to selected industries. The GOK stated that the lending decisions and loan distributions of financial institutions in Korea reflect commercial considerations. The GOK also stated that its role in the financial sector is limited to monetary and credit policies as well as bank supervision and examination.

According to the GOK, measures were taken in 1998 to liberalize the Korean financial sector. For example, in January 1998 the GOK announced closure of some banks, and in April 1998, launched the Financial Supervisory Commission (FSC) to monitor the competitiveness of financial institutions. In June 1998, the Regulation on Foreign Exchange Controls was amended to further liberalize foreign currency transactions, and in July, the GOK abolished the limit on purchasing foreign currency. According to the GOK, it also liberalized access to foreign loans. For direct foreign loans to Korean companies, the approval process under Article 19 of the Foreign Investment and Foreign Capital Inducement Act (FIFCIA) and Article 21 of its enforcement decree were eliminated and replaced with the Foreign Investment Promotion Act (FIPA), effective in November 1998. However, during most of the POI, access to direct foreign loans still required the approval of the Ministry of Finance and Economy.

Regarding the GOK regulated credit from government-controlled banks such as the Korea Development Bank (KDB), the GOK reported that the KDB Act was amended in January 1998, in response to the financial crisis in 1997. According to the GOK, with the new Act, the KDB no longer allocates funds for various functional categories; such as R&D, environment and technology. All functional loan categories were eliminated and such loans were consolidated into a single category for facility (equipment) loans. The GOK also stated that the KDB strengthened its credit evaluation procedures by developing an objective and systematic credit evaluation standard to prevent arbitrary decisions on loans and interest rates. The KDB changed its Credit Evaluation Committee to the Credit Deliberation Committee (CDC), and gave the CDC the authority to make lending decisions. As a result, the KDB governor no longer makes lending decisions without the approval of the CDC. The GOK also stated that in 1997, the KDB used the prime rate plus a spread for determining interest rates. Effective January 1, 1998, the KDB increased the range of the credit spread to provide more flexibility in determining interest rates based on creditworthiness and to allow the KDB to increase its profits. However, respondents did not provide any evidence to demonstrate that the KDB has discontinued the practice of selectively making loans to specific firms or activities to support GOK policies.

In *Stainless Steel Plate,* the Department noted conflicting information regarding the GOK's direct or indirect influence over the lending decisions of financial institutions. For example, the GOK policies appeared to be aimed, in part, at promoting certain sectors of the economy, such as high technology, which is defined to include the steel industry.

While the GOK started to plan and implement reforms in the financial system during the POI as a result of the 1997 financial crisis, the record evidence indicates that the GOK previously attempted reforms of the

[3] In the *Stainless Steel Plate* and *Stainless Steel Sheet and Strip* investigations, the Department based its affirmative direction of credit determination for the period 1992 through 1997 on record evidence covering a time period different than that covered by the CAFC's decision in *AK Steel* which was Pre-1992. Moreover, in its decision, the CAFC did not reject the notion of the GOK directing credit specifically to the Korean steel industry but rather took issue with the evidence upon which the Department based its affirmative finding. Thus, because the Department based its affirmative direction of credit determination for the years 1992 through 1997 on evidence that was not before the CAFC at the time of its decision in *AK Steel,* that case does not preclude a finding of directed credit during this later time period.

financial system in order to remove or reduce its control and influence over lending in the country. In the past ten years, the GOK has twice attempted to reform its financial system. In 1988, the GOK attempted to deregulate interest rates. However, the government deemed the 1988 liberalization a failure. When the interest rates began to rise, the GOK canceled the reforms by indirectly pressuring the banks to keep interest rates low. In the early 1990s, the GOK attempted reforms again with a four-stage interest rate deregulation plan. Again, the GOK deemed this attempt to reform the financial system a failure. During 1998 and 1999, the GOK has threatened to cut off credit to Korean companies unless the companies follow GOK policies. In addition, during the POI, the GOK took control of five large commercial banks due to the financial crisis.

Based upon the information on the record and our determinations in *Stainless Steel Plate and Stainless Steel Sheet and Strip,* we determine that the GOK continued to control, directly and indirectly, the lending practices of domestic banks and government-owned banks through the POI.

With respect to foreign sources of credit, in *Stainless Steel Plate* and *Stainless Steel Sheet and Strip*, we determined that access to government regulated foreign sources of credit in Korea did not confer a benefit to the recipient as defined by 771(5)(E)(ii) of the Act, and, as such, credit received by respondents from these sources was found not countervailable. This determination was based upon the fact that credit from Korean branches of foreign banks was not subject to the government's control and direction. Thus, respondents' loans from these banks served as an appropriate benchmark to establish whether access to regulated foreign sources of credit conferred a benefit on respondents. On the basis of this comparison, we found that there was no benefit during the POI. Petitioners have not provided any new information or evidence of changed circumstances to cause us to revisit this determination. Therefore, we continue to determine that credit from Korean branches of foreign banks were not subject to the government's control and direction. As such, lending from this source continues to be not countervailable, and loans from Korean branches of foreign banks continue to serve as an appropriate benchmark to establish whether access to regulated foreign sources of funds confer a benefit to respondents.

With respect to loans provided under the Energy Savings Fund, in *Stainless Steel Plate,* 64 FR at 15533, the Department found that these loans were countervailable as directed credit on the grounds that they are policy loans provided by banks that are subject to the same GOK influence as described above. POSCO had Energy Savings Fund loans outstanding during the POI. Accordingly, these loans are countervailable as directed credit, and we have included these long-term loans in POSCO's benefit calculations for directed credit.

In addition, respondents received loans under the Industry Promotion Fund and the Industry Technology Development Fund. Similar to our determination with respect to the Energy Savings Fund, loans from both of these Industry Funds are policy loans provided by banks subject to the same GOK influence as described above. Therefore, loans from these two Industry Funds are countervailable as directed credit. POSCO's affiliates had outstanding loans during the POI from these Industry Funds. Therefore, we have included these long-term loans in POSCO's benefit calculations for directed credit.

Both POSCO and DSM received long-term loans from domestic banks and government-owned banks during the period 1992 to 1998 that were still outstanding during the POI. These included loans with both fixed and variable interest rates. To determine the benefit from the regulated loans with fixed interest rates and those with variable interest rates, we applied the methodology provided for in section 351.505(c)(2) and section 351.505(c)(4), respectively, of the CVD Regulations, using as our benchmark the rate described in the ''Subsidies Valuation Information'' section of the notice, above. Therefore, for both fixed and variable rate loans, we calculated the difference in interest payments for the POI based upon the difference in the amount of actual interest paid during 1998 on the regulated loan and the amount of interest that would have been paid on a comparable commercial loan. We then summed the benefit amounts from the loans attributable to the POI and divided the total benefit by each company's respective total sales. On this basis, we determine the net countervailable subsidy to 0.15 percent *ad valorem* for POSCO, and 0.13 percent *ad valorem* for DSM.

B. GOK Infrastructure Investment at Kwangyang Bay

In *Steel Products from Korea,* the Department investigated the GOK's infrastructure investments at Kwangyang Bay over the period 1983–1991. We determined that the GOK's provision of infrastructure at Kwangyang Bay was countervailable because we found POSCO to be the predominant user of the GOK's investments. The Department has consistently held that a countervailable subsidy exists when benefits under a program are provided, or are required to be provided, in law or in fact, to a specific enterprise or industry or group of enterprises or industries. *See Steel Products from Korea,* 58 FR at 37346.

No new factual information or evidence of changed circumstances has been provided to the Department with respect to the GOK's infrastructure investments at Kwangyang Bay over the period 1983–1991. Therefore, to determine the benefit from the GOK's investments to POSCO during the POI, we relied on the calculations performed in the 1993 investigation of *Steel Products from Korea,* which were placed on the record of this investigation by POSCO. In measuring the benefit from this program in the 1993 investigation, the Department treated the GOK's costs of constructing the infrastructure at Kwangyang Bay as untied, non-recurring grants in each year in which the costs were incurred.

To calculate the benefit conferred during the POI, we applied the Department's standard grant methodology and allocated the GOK's infrastructure investments over a 15-year allocation time period. *See* the allocation period discussion under the ''Subsidies Valuation Information'' section, above. We used as our discount rate the three-year corporate bond rate on the secondary market as used in *Steel Products from Korea.* We then summed the benefits received by POSCO during 1998 from each of the GOK's yearly investments over the period 1983–1991. We then divided the total benefit attributable to the POI by POSCO's total sales for 1998. On this basis, we determine a net countervailable subsidy of 0.23 percent *ad valorem* for the POI.

C. Short-Term Export Financing

The Department determined that the GOK's short-term export financing program was countervailable in *Steel Products from Korea (see* 58 FR at 37350). During the POI, POSCO was the only producer/exporter of the subject merchandise that used export financing.

In accordance with section 771(5A)(B) of the Act, this program constitutes an export subsidy because receipt of the financing is contingent upon export performance. A financial contribution is provided to POSCO under this program within the meaning of section 771(5)(D)(i) of the Act in the form of a loan. To determine whether this export financing program confers a countervailable benefit to POSCO, we compared the interest rate POSCO paid on the export financing received under this program during the POI with the interest rate POSCO would have paid on a comparable short-term commercial loan. See discussion above in the ''Subsidies Valuation Information'' section with respect to short-term loan benchmark interest rates.

Because loans under this program are discounted (*i.e.,* interest is paid up-front at the time the loans are received), the effective rate paid by POSCO on its export financing is a discounted rate. Therefore, it was necessary to derive from POSCO's company-specific weighted-average interest rate for short-term won-denominated commercial loans, a discounted benchmark interest rate. We compared this discounted benchmark interest rate to the interest rates charged on the export financing and found that the program interest rates were lower than the benchmark rate. Therefore, in accordance with section 771(5)(E)(ii) of the Act, we determine that this program confers a countervailable benefit because the interest rates charged on the loans were less than what POSCO would have had to pay on a comparable short-term commercial loan.

To calculate the benefit conferred by this program, we compared the actual interest paid on the loans with the amount of interest that would have been paid at the applicable discounted benchmark interest rate. When the interest that would have been paid at the benchmark rate exceeded the interest that was paid at the program interest rate, the difference between those amounts is the benefit. We then divided the benefit derived from all of POSCO's export loans by the value of the company's total exports. On this basis, we determine a net countervailable subsidy of less than 0.005 percent *ad valorem* for POSCO.

D. Reserve for Export Loss

Under Article 16 of the Tax Exemption and Reduction Control Act (TERCL), a domestic person engaged in a foreign-currency earning business can establish a reserve amounting to the lesser of one percent of foreign exchange earnings or 50 percent of net income for the respective tax year. Losses accruing from the cancellation of an export contract, or from the execution of a disadvantageous export contract, may be offset by returning an equivalent amount from the reserve fund to the income account. Any amount that is not used to offset a loss must be returned to the income account and taxed over a three-year period, after a one-year grace period. All of the money in the reserve is eventually reported as income and subject to corporate tax either when it is used to offset export losses or when the grace period expires and the funds are returned to taxable income. The deferral of taxes owed amounts to an interest-free loan in the amount of the company's tax savings. During the POI, DSM was the only exporter of the subject merchandise that benefitted from this program.

We determine that the Reserve for Export Loss program constitutes an export subsidy under section 771(5A)(B) of the Act because use of the program is contingent upon export performance. We also determine that this program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan. The benefit provided by this program is the tax savings enjoyed by the company.

To determine the benefit conferred by this program, we calculated the tax savings by multiplying the balance amount of the reserve as of December 31, 1997, by the corporate tax rate for 1997. We treated the tax savings on these funds as a short-term interest-free loan. Accordingly, to determine the benefit, the amount of tax savings was multiplied by the company's weighted-average interest rate for short-term won-denominated commercial loans for the POI, as described in the ''Subsidies Valuation Information'' section, above. Using the methodology for calculating subsidies received by trading companies, which also is detailed in the ''Subsidies Valuation Information'' section of this notice, we determine a net countervailable subsidy of 0.02 percent *ad valorem* for DSM.

E. Reserve for Overseas Market Development

Article 17 of the TERCL operates in a manner similar to Article 16, discussed above. This provision allows a domestic person engaged in a foreign trade business to establish a reserve fund equal to one percent of its foreign exchange earnings from its export business for the respective tax year. Expenses incurred in developing overseas markets may be offset by returning from the reserve, to the income account, an amount equivalent to the expense. Any part of the fund that is not placed in the income account for the purpose of offsetting overseas market development expenses must be returned to the income account over a three-year period, after a one-year grace period. As is the case with the Reserve for Export Loss, the balance of this reserve fund is not subject to corporate income tax during the grace period. However, all of the money in the reserve is eventually reported as income and subject to corporate tax either when it offsets overseas expenses or when the grace period expires. The deferral of taxes owed amounts to an interest-free loan equal to the company's tax savings. The following exporters of the subject merchandise used this program during the POI: Hyosung, POSTEEL, Sunkyong, and DKI.

We determine that the Reserve for Overseas Market Development program constitutes an export subsidy under section 771(5A)(B) of the Act because use of the program is contingent upon export performance. We also determine that this program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan. The benefit provided by this program is the tax savings enjoyed by the companies.

To determine the benefits conferred by this program during the POI, we employed the same methodology used for determining the benefit from the Reserve for Export Loss program. Using the methodology for calculating subsidies received by trading companies, which is detailed in the ''Subsidies Valuation Information'' section of this notice, we determine a net countervailable subsidy of 0.01 percent *ad valorem* for POSCO and a rate of 0.01 percent *ad valorem* for DSM.

F. Technical Development Reserve Funds Under Article 8 of TERCL

Article 8 of TERCL allows a company operating in manufacturing or mining, or in a business prescribed by the Presidential Decree, to appropriate reserve funds to cover the expenses needed for development or innovation of technology. These reserve funds are included in the company's losses and reduces the amount of taxes paid by the company. Article 8 specifies that capital good and capital intensive companies can establish a reserve of five percent, while companies in all other industries are only allowed to establish a three percent reserve.

Because the capital goods industry is allowed to claim a larger tax reserve under this program than all other manufacturers, we determine that the Technical Development Reserve Funds is specific under section 771(5A)(D). We also determine that this program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan. The benefit provided by this program is the differential two percent tax savings enjoyed by the companies in the capital goods industry, which includes steel manufacturers.

During the POI, POSCO was the only exporter of the subject merchandise that benefitted from this program. To determine the benefit conferred by this program, we first calculated the balance amount of the reserve as of December 31, 1997, attributable to the company being allowed to contribute a higher amount to the reserve account. We then calculated the tax savings by multiplying the calculated balance amount in the reserve account, by the corporate tax rate for 1997. We treated the tax savings on these funds as a short-term interest-free loan. As a benchmark interest rate, we used an affiliated company's weighted-average interest rate for short-term won-denominated commercial loans for the POI. On this basis, we determine a net countervailable subsidy for POSCO of less than 0.005 percent *ad valorem*.

G. Investment Tax Credits

Under the TERCL, companies in Korea are allowed to claim investment tax credits for various kinds of investments. If the tax credits cannot all be used at the time they are claimed, then the company is authorized to carry them forward for use in subsequent tax years. During the POI, POSCO claimed various investment tax credits to reduce its 1997 net tax liability. In *Steel Products from Korea,* we found that investment tax credits were not countervailable (*see* 58 FR at 37351); however, there were changes in the countervailing duty statute effective in 1995, which have caused us to revisit the countervailability of the investment tax credits.

POSCO used the following tax credits: (1) tax credits for investments in facilities for research and experiment under Article 10(1)(a) and Article 10(1)(b); (2) tax credits for investments in productivity improvement under Article 25; (3) tax credits for specific facility investments under Article 26; (4) tax credit for Equipment Investment to Promote Workers' Welfare under Article 88.

Under these TERCL Articles, if a company invested in foreign-produced facilities (*i.e.,* facilities produced in a foreign country), the company received a tax credit equal to either three or five percent of its investment. However, if a company invested in domestically-produced facilities (*i.e.*, facilities produced in Korea) under the same Articles, it received a 10 percent tax credit. Under Article 88, a tax credit can only be claimed if a company is using domestic machines and materials. Under section 771(5A)(C) of the Act, which became effective on January 1, 1995, a program that is contingent upon the use of domestic goods over imported goods is specific, within the meaning of the Act. Because Korean companies received a higher tax credit for investments made in domestically-produced facilities, we determine that investment tax credits received under Articles 10(1)(a), 10(1)(b), 25, 26, and 88 constitute import substitution subsidies under section 771(5A)(C) of the Act. In addition, because the GOK is foregoing the collection of tax revenue otherwise due under this program, we determine that a financial contribution is provided under section 771(5)(D)(ii) of the Act. The benefit provided by this program is a reduction in taxes payable. Therefore, we determine that this program is countervailable.

To calculate the benefit from this tax credit program, we examined the amount of tax credits POSCO deducted from its taxes payable for the 1997 fiscal year. POSCO deducted from its 1997 taxes payable, credits earned in the years 1995 and 1996. Therefore, we first determined the amount of the tax credits claimed which were based upon investments in domestically-produced facilities. We then calculated the additional amount of tax credits received by the company because it earned tax credits of 10 percent on such investments instead of a three or five percent tax credit. Next, we calculated the amount of the tax savings earned through the use of these tax credits during the POI and divided that amount by POSCO's total sales during the POI. On this basis, we determine a net countervailable subsidy of 0.32 percent *ad valorem* for POSCO. DSM did not claim any tax deductions during the POI through the use of any of these investment tax credits.

H. Electricity Discounts Under the Requested Load Adjustment Program

The GOK reported that during the POI, the government-owned Korea Electric Power Company (KEPCO) provided respondents with four types of discounts under its tariff schedule. These four discounts were based on the following rate adjustment programs in KEPCO's tariff schedule: (1) Power Factor Adjustment; (2) Summer Vacation and Repair Adjustment; (3) Requested Load Adjustment; and (4) Voluntary Curtailment Adjustment. *See* the discussion below in ''Programs Determined To Be Not Countervailable'' with respect to the Power Factor Adjustment and Summer Vacation and Repair Adjustment, and Voluntary Curtailment Adjustment discount programs.

The GOK introduced the Requested Load Adjustment (RLA) discount in 1990, to address emergencies in KEPCO's ability to supply electricity. Under this program, customers with a contract demand of 5,000 KW or more, who can curtail their maximum demand by 20 percent or suppress their maximum demand by 3,000 KW or more, are eligible to enter into a RLA contract with KEPCO. Customers who choose to participate in this program must reduce their load upon KEPCO's request, or pay a surcharge to KEPCO.

During the POI, KEPCO granted 33 companies RLA discounts even though KEPCO did not request these companies to reduce their respective loads. The GOK reported that because KEPCO increased its capacity to supply electricity in 1997, it reduced the number of companies with which it maintained RLA contracts in 1997 and 1998. In 1996, KEPCO had entered into RLA contracts with 232 companies, which was reduced to 44 companies in 1997 and 33 in 1998. Therefore, we continue to find that the discounts provided under the RLA were distributed to a limited number of users. Given the data with respect to the small number of companies which received RLA electricity discounts during the POI, we determine that the RLA program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act. The benefit provided under this program is a discount on a company's monthly electricity charge. A financial contribution is provided to POSCO under this program within the meaning of section 771(5)(D)(ii) of the Act in the form of revenue foregone by the government. *See Stainless Steel Sheet and Strip,* 64 FR at 40454.

Under section 351.524(c) of the CVD regulations, discounts on electricity will normally be treated as recurring benefits and expensed in the year of receipt. Therefore, to measure the benefit from this program, we summed the electricity discounts which POSCO and DSM received from KEPCO under the RLA program during the POI and divided that amount by each company's total sales value for 1998. On this basis, we determine a net countervailable subsidy of less than 0.005 percent *ad valorem* for POSCO, and a rate less than 0.005 percent *ad valorem* for DSM from the RLA discount program.

I. Asset Revaluation Pursuant to TERCL Article 56(2)

This provision under Article 56(2) of the Tax Exemption and Reduction Control Act (TERCL) allowed companies making an initial public offering between January 1, 1987, and December

31, 1990, to revalue their assets without meeting the requirement in the Asset Revaluation Act of a 25 percent change in the wholesale price index since the company's last revaluation. In *Steel Products from Korea,* after verification, petitioners submitted additional information, which according to them, indicated that POSCO's revaluation may have been significantly greater than that of the other companies that revalued. Because the information submitted by petitioners was untimely, it was rejected; however, we requested additional information on the subject. The additional information submitted by petitioners contained data on the amount of assets revalued of only 45 of the 207 companies that revalued pursuant to Article 56(2). It was unclear from petitioners' data which companies revalued pursuant to Article 56(2) and which revalued in accordance with the general provisions of the Asset Revaluation Act. Because of these shortcomings, and because the information was submitted too late for verification, we were unable to draw conclusions with respect to the relative benefit derived by POSCO from this program. Since there was no evidence of *de jure* or *de facto* selectivity concerning the timing of POSCO's revaluation or the method of POSCO's revaluation under the Asset Revaluation Act, the Department determined this program to be not countervailable. *See Steel Products from Korea,* 58 FR at 37351.

In the petition in this case, petitioners provided information to substantiate their allegation that POSCO and DSM received a specific benefit under this program because their massive asset revaluations permitted the companies to substantially increase their depreciation and, thereby, reduce their income taxes payable. Based on this new information, the Department initiated a reexamination of the countervailability of this program and solicited information regarding the usage of this program.

Because the enabling legislation does not expressly limit access to the subsidy to an enterprise or industry, or group thereof, the program is not *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. Although the regulation itself does not expressly limit the access to this law to a specified group or industry, it does place restrictions on the time period and eligibility criteria which may have been structured to result in *de facto* limitations on the actual usage of this tax program. For example, Article 56(2) was enacted on November 28, 1987, and applied only to companies making an initial public offering from January 1, 1987 until the provision was abolished effective December 31, 1990. Pursuant to Article 56(2), companies listed on the Korea Stock Exchange between January 1, 1987 and December 31, 1988 (as was the case with POSCO) had until December 31, 1989 to revalue their assets. A company that listed its stock after December 31, 1988 had to revalue its assets prior to being listed on the stock exchange. Therefore, based upon the eligibility criteria of the program, Article 56(2) effectively limited usage of this program to only the 316 companies that were newly listed on the Korean Stock Exchange during the three years the program was in place rather than the 15 to 24 thousand manufacturers in operation in Korea during that period.

Information on the record of the current investigation shows that during the period 1987–1990, there were between 14,988 and 24,073 manufacturing companies operating in Korea, and only 77 companies revalued their assets in 1989 (at the time the respondents revalued their assets). In addition to the limited number of companies using this program, we note that the basic metal sector accounted for 83 percent of the total revaluation surplus amount (book value less revalued amount), which indicates that the basic metal industry was a dominant user of this program in 1988/89. *See, e.g., Stainless Steel Plate in Coils from South Africa,* 64 FR 15553 (March 31, 1999). In examining the *de facto* specificity of the program, we recognize the concern that a tax benefit conferred on a large company might be disproportionate merely because of the size of the company. However, based upon the facts of this particular case, this concern is unfounded. First, given the number of manufacturing companies in Korea during the effective period of this program's operation, there were very few companies receiving tax benefits under this program. In addition, given the number of manufacturers in Korea, there should have been other large companies relative to the size of POSCO revaluing assets under this program. However, this is not the case with respect to this program.

Therefore, based upon the above set of facts, we determine that this program is specific, within the meaning of 771(5A)(D)(iii). As a result of the increase in the value of depreciable assets resulting from the asset revaluation, the companies were able to lower their tax liability. Therefore, we also determine that the program provides a financial contribution within the meaning of section 771(5)(D)(ii), because by allowing companies to reduce their income tax liability, the GOK has foregone revenue that is otherwise due.

The benefit from this program is not the amount of the revaluation surplus, but rather the impact of the difference that the revaluation of depreciable assets has on a company's tax liability each year. Based on clarification of the May 28, 1999 questionnaire responses submitted by the respondents, we have revised our calculations. We have now used the additional depreciation in 1997, which resulted from the company's assets revaluation and multiplied that amount by the tax rate applicable to the tax return filed in the POI, and divided the benefit for each company by their respective total sales during the POI. On this basis, we determine a net countervailable subsidy of 0.04 percent *ad valorem* for POSCO and a rate of 0.02 percent *ad valorem* for DSM.

I. Exemption of Bond Requirement for Port Use at Asan Bay

The GOK's overall development plan is published every 10 years, last published in 1991, and describes the nationwide land development goals and plans for the balanced development of the country. Under these plans, the Ministry of Construction and Transportation (MOCAT) prepares and updates its Asan Bay Area Broad Development Plan. The Korea Land Development Corporation (KOLAND) is a government investment corporation that is responsible for purchasing, developing, and selling land in the industrial sites.

The Asan Bay area was designated as an Industrial Site Development Area in December 1979. The Asan Bay area consists of five development sites, (1) Kodai, (2) Wanjung, (3) Woojung, (4) Poseung, and (5) Bukok. Although Wanjung and Woojung are within the Asan National Industrial Estate, those properties are not owned by KOLAND.

After the preliminary determination, we requested and received information regarding the GOK's infrastructure investments at Asan Bay, which we subsequently verified. At verification, the officials explained that the GOK had built port berths #1, #2, #3, and #4 in the Poseung area. We also learned of POSCO's activities at Asan Bay. In September 1997, POSCO signed a three-year lease agreement with the Inchon Port Authority (IPA) for the exclusive use of port berth #1, which was constructed by the GOK, and paid the applicable user fee.

In 1997, the GOK also entered into a lease agreement for the exclusive use of the other port berths #2, #3, and #4, with a consortium of six companies. The consortium of companies was required to purchase bonds, which the GOK would repay without interest after the lease expired in 10 years. However, POSCO was not required to purchase a bond for the exclusive use of port berth #1. See POSCO Verification Report, public version dated November 19, 1999, on file in the CRU.

We first determine that the waiver of the bond purchase was only provided to POSCO. Therefore, the program meets the specificity requirements under section 771(5A)(D) of the Act. In addition, we determine that the GOK's waiver of the bond purchase requirement for the exclusive use of port berth #1 by POSCO confers a financial contribution under section 771(5)(D)(ii) of the Act, because the GOK foregoes collecting revenue that it normally would collect. We also determine that because the GOK had to repay the bonds at the end of the lease term, the bond purchase waiver is equivalent to an interest free loan for three years, the duration of the lease.

To determine the benefit from the loan, we treated the amount of the bond as a long-term interest-free loan. We then applied the methodology provided for in section 351.505(c)(4) of the CVD Regulations for a long-term fixed rate loan, and compared the amount of interest that should have been paid during 1998 on the interest free loan to the amount of interest that would have been paid based upon the interest rate on a comparable won-denominated benchmark loan. We then divided the benefit by the company's total sales. On this basis, we determine the net countervailable subsidy to be less than 0.005 percent ad valorem for POSCO.

J. Price Discount for DSM Land Purchase at Asan Bay

In 1995, DSM purchased land at the Asan Bay Industrial Site, a GOK constructed industrial estate. DSM began making land payments in 1995 and continued until the last payment in December 1998. The original total land cost to the KDLC included land, management fees, and land development costs. During the period of the contract from 1995 to 1998, a variety of cost and fees changed. For instance, DSM decided to have a private company perform land development, thus reducing the original total amount of land cost. Also, the management fee to West Area Industrial Site Management Corporation (WAISM) was waived and the GOK further reduced the land price.

During verification, the Department noted a difference between the total cost of land amount after changes and what DSM actually paid. This difference occurred because the GOK reduced the amount by percent and waived a management fee owed to WAISM. Based upon 771(5A)(D)(iii)(I) of the Act, this price reduction was specific to DSM. As the GOK issued this price reduction, this confers a benefit under 771(5)(D)(ii) of the Act, because the GOK foregoes revenue that it normally would collect.

To calculate the benefit from this program, the Department first took the original amount of the land cost and deducted the amount that was to be paid to the KLDC for land development, to obtain the new price of the land. Next, to derive the amount DSM paid for the land, we took the actual amount and added the prepaid interest. The Department then took the difference between the new price of the land and the calculated amount paid by DSM. We treated the difference as a grant as described in 19 CFR 351.504 of the CVD regulations. Although this program confers a non-recurring benefit, the amount of the benefit is less than 0.5 percent of DSM's total sales, therefore, we have expensed this benefit in the year of receipt, which was the POI, pursuant to section 351.524(2) of the CVD regulations. On this basis, we have calculated a net countervailable subsidy rate of 0.48 percent *ad valorem* for DSM.

K. POSCO's Dual-Pricing Scheme

POSCO maintains three different pricing systems which serve different markets: domestic prices in Korean won for products that will be consumed in Korea, direct export prices in U.S. dollars or Japanese yen, and local export prices in U.S. dollars. According to POSCO's response, local export prices are provided to those domestic customers who purchase steel for further processing into products that are exported. POSCO is the only Korean producer of slabs, which is the main input into the subject merchandise. During the POI, POSCO sold slab to DSM for products that will be consumed in Korea, as well as slab to produce exports of the subject merchandise.

During the POI, POSCO continued to be a government-controlled company. *See Stainless Steel Sheet and Strip* 64 FR at 30642–43. POSCO sets different prices for the identical product for domestic purchasers based upon that purchaser's anticipated export performance. *See Stainless Steel Sheet and Strip,* 64 FR at 30647. Thus, in selling to DSM, POSCO charged a domestic price for slab when DSM's finished product was to be sold in Korea, and a ''local-export'' price for slab when DSM's finished product was to be exported. In *Stainless Steel Sheet and Strip,* we found this pricing scheme to be an export subsidy under section 771(5A)(B) of the Act, which provides a financial contribution under section 771(5)(D) of the Act.

In *Stainless Steel Sheet and Strip,* we calculated the benefit conferred by POSCO's pricing policies under section 351.516 of the CVD regulations which provides the methodology used to determine price preferences for inputs used in the production of goods for export. Therefore, in *Stainless Steel Sheet and Strip,* and in the preliminary determination of this investigation, the Department determined the benefit from this pricing scheme by comparing the difference in the local-export and domestic prices charged by POSCO.

In comments prior to our preliminary determination, petitioners argued that POSCO's dual-pricing system is a provision of a good for less than adequate remuneration under section 771(5)(E)(iv), therefore, petitioners stated that the Department should analyze this pricing scheme in accordance with section 351.511 of the CVD regulations. In our preliminary determination, we stated that we would continue to analyze this issue for our final determination.

The focus of our analysis in *Stainless Steel Sheet and Strip* was whether the GOK, acting through its ownership and control of POSCO, was setting below-market prices for raw materials used by Korean steel exporters. Based upon this premise, we determined that this program should be analyzed under section 351.516 of the CVD regulations to measure the discriminatory pricing practice between domestic and export consumption. This was the appropriate methodology to employ based upon the allegation in *Stainless Steel Sheet and Strip* that the government was providing price preferences for inputs used in the production of goods for export. As noted above, section 351.516 specifies the methodology to be employed when there are price preferences for inputs used in the production of goods for export and is based upon Item (d) of the Illustrative List of Export Subsidies, which is provided for in Annex I of the Agreement on Subsidies and Countervailing Measures.

In this current investigation, petitioners have argued that the GOK is controlling both the domestic and export prices of slab, the input into plate. Petitioners have stated that the same information on the record that demonstrates that the GOK through its control of POSCO is setting below-market prices for exporters also supports a conclusion that a similar pricing policy is followed for POSCO's domestic-priced slab sales. Therefore, we must analyze POSCO's dual pricing scheme based upon the specific allegation in this current investigation, *i.e.*, the provision of a good or service for less than adequate remuneration.

Under section 351.511(a)(2), the adequacy of remuneration is to be determined by comparing the government price to a market determined price based on actual transactions in the country in question. Such prices could include prices stemming from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from competitively run government auctions. During the POI, DSM imported slab; therefore, we are using actual imported prices of slab as our basis of comparison. Based upon this comparison, we determined that POSCO's local-export price for slab is sold at less than adequate remuneration. As a result, a benefit is conferred to DSM under section 771(5)(E)(iv). We have not made a determination with respect to POSCO's domestic-priced slab sales to DSM because under section 351.525(b)(4) of the CVD regulations, subsidies tied to a particular market will be attributed only to the products sold by the firm to that market.

To determine the value of the benefit under this program, we compared the quarterly delivered weighted-average price charged by POSCO to DSM for local export production to the quarterly delivered duty-exclusive weighted-average price DSM paid for imported slab, by grade of slab. We used a duty-exclusive price because, consistent with the prevailing market conditions referred to in section 771(5)(E)(iv) of the Act, an exporter in Korea is entitled to duty drawback. We then divided the amount of the price savings by the value of exports of the subject merchandise during the POI. On this basis, we determine that DSM received a countervailable subsidy of 0.90 percent *ad valorem* from this program during the POI.

L. Special Cases of Tax for Balanced Development Among Areas (TERCL Article 43)

TERCL Article 43 allows a company to claim a tax reduction or exemption for income gained from the disposition of factory facilities when relocating from a large city to a local area (*e.g.,* Seoul Metropolitan area to a place outside the Seoul Metropolitan area). On December 29, 1995, DSM sold land from its Pusan factory and within three years from the sale date began production at its Pohang plant. In accordance with Article 16, paragraph 7 of the Addenda to the TERCL, DSM was entitled to receive an exemption on its income tax for the resulting capital gain.

Payment for the Pusan facilities is on a long-term installment basis. Therefore, the income tax on the capital gain is payable when DSM actually receives payment or transfers the title of ownership. The capital gain in the tax year cannot exceed DSM's total taxable income. The maximum tax savings permitted is 100 percent of the taxable income; however, this program is also subject to the minimum tax. This program does not allow carrying forward of unused benefits in future years.

We determine that the TERCL Article 43, for Special Cases of Tax for Balanced Development Among Areas is specific within the meaning of section 771(5A)(D)(iv) of the Act, because the program is limited to enterprises or industries located within a designated geographical region. *See Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils From Italy,* 64 FR 15508, 15516 (March 31, 1999) (funds were regionally specific because they were limited to certain areas within Italy). We also determine that Article 43 provides a financial contribution within the meaning of section 771(5)(D)(ii), because the GOK foregoes revenue that is otherwise due by granting this tax credit.

To calculate the benefit from this tax credit program, we examined the amount of the tax credit DSM deducted from its taxes payable for the 1997 fiscal year. In DSM's 1997 income tax return filed during the POI it deducted from its taxes payable, credits earned in 1997. Next, we calculated the amount of the tax savings and divided that amount by DSM's total sales during POI. Using this methodology, we determine a net countervailable subsidy of 0.61 percent *ad valorem* for DSM. POSCO did not use this program.

M. Research and Development (R&D)

The GOK, through MOCIE, provides R&D grants to support numerous projects pursuant to the Industrial Development Act, including technology for core materials, components, and engineering systems, and resource technology. The program is designed to foster the development of efficient technology for industrial development. A company may participate in this program in several ways: (1) a company may perform its own R&D project, (2) it may participate through the Korea New Iron and Steel Technology Research Association (KNISTRA), which is an association of steel companies established for the development of new iron and steel technology, and/or (3) a company may participate in another company's R&D project and share R&D costs, along with funds received from the GOK. To be eligible to participate in this program, the applicant must meet the qualifications set forth in the basic plan and must perform R&D as set forth under the Notice of Industrial Basic Technology Development. Upon completion of the R&D project, the participating company must repay 50 percent of the R&D grant (30 percent in the case of SME's established within 7 years) to the GOK, in equal payments over a five-year period. If the R&D project is not successful, the company must repay the full amount.

This program was not reported until after the Department published its preliminary determination. We subsequently received information on this program during verification. However, we are unable to conduct a complete *de facto* specificity analysis regarding R&D that respondents performed with GOK assistance because: (1) A complete breakdown of projects, company names, sector, grant amount, and the duration of the projects was not provided until verification, and (2) this data is primarily in Korean. Therefore, as facts available, we determine that grants provided directly to respondents and their affiliates that are steel-related, are specific and thus countervailable. We also determine that R&D funds through KNISTRA are specific to the steel industry, and therefore countervailable. These grants also provide a financial contribution under section 771(5)(D)(i) of the Act.

Under 19 CFR 351.524, non-recurring benefits are allocated over time, while recurring benefits are expensed in the year of receipt. In addition, non-recurring benefits which are less than 0.5 percent of a company's relevant sales are also expensed in the year of receipt. The grants provided to respondents did not exceed 0.5 percent of each company's respective sales. Therefore, regardless of whether this program provided recurring or non-recurring benefits, the benefits are expensed in the year of receipt. To determine the benefit from the grants received through KNISTRA, we first calculated the percent of each company's contribution to KNISTRA and applied that percent to the GOK's contribution for each R&D project. We then summed the grants received by each company through KNISTRA and divided the amount by each company's respective total sales. To determine the benefit from the grants provided directly to the companies, we divided the amount of the grant by each company's respective consolidated total sales. Based upon this methodology, we determine that POSCO received a countervailable subsidy of 0.07 percent *ad valorem,* and that DSM received a countervailable subsidy less than 0.005 percent *ad valorem.*

II. Programs Determined To Be Not Countervailable

A. Electricity Discounts under Power Factor Adjustment, Summer Vacation and Repair Adjustment, and Voluntary Curtailment Adjustment Programs

In *Stainless Steel Sheet and Strip,* we determined that the Power Factor Adjustment, and the Summer Vacation and Repair Adjustment programs are not countervailable because the discounts under these programs are distributed to a large number of firms in a wide variety of industries. *See Stainless Steel Sheet and Strip* 64 FR at 30647–48.

Regarding the Voluntary Curtailment Adjustment (VCA) program, KEPCO introduced this discount in 1995, to provide a stable supply of electricity and to improve energy efficiency by reducing demand during periods of peak consumption that occur during the summer. Under this program, customers who use general, educational or industrial services with a contract demand of 1,000 kw or more, and who arrange with KEPCO a curtailment period of five or more days (or times) during the July 15–August 31 period, are eligible to enter into a VCA contract with KEPCO. Customers who choose to participate in this program must curtail demand by 20 percent or more on the basis of the average daily demand during 10 a.m.–12 p.m., or by 3,000 kw.

Customers can apply for this program until June 15 of each year. If KEPCO finds the application in order, KEPCO approves the application. After approval, KEPCO and the customer enter into a contract with respect to the VCA discount. Under this program, a basic discount of 110 won per kw is granted between July 15 and August 31.

We analyzed whether the VCA discount program is specific in law (*de jure* specificity), or in fact (*de facto* specificity), within the meaning of section 771(5A)(D)(i) and (iii) of the Act. First, we examined the eligibility criteria contained in the law. The Regulation on Electricity Supply and KEPCO's Rate Regulations for Electric Service identified companies within a broad range of industries as being eligible to participate in the electricity discount programs. The VCA discount program is available to numerous companies across all industries, provided that they have the required contract demand and can reduce their maximum demand by a certain percentage. Therefore, we determine that the VCA electricity programs is not *de jure* specific under section 771(5A)(D)(i) of the Act because the regulation does not explicitly limit eligibility of the program.

We next examined data on the distribution of assistance under the VCA program to determine whether the electricity discount program meets the criteria for *de facto* specificity under section 771(5A)(D)(iii) of the Act. We found that discounts provided under the VCA program were distributed to a large number of customers, across a wide range of industries. Given the data with respect to the large number of companies and industries which received VCA electricity discounts, and the fact that POSCO and DSM were not dominant or disproportionate users of this program, we determine that the VCA program is not *de facto* specific under section 771(5A)(D)(iii) of the Act. Therefore, we determine that the VCA program is not countervailable.

B. Port Facility Fees

In *Stainless Steel Sheet and Strip,* we determined that this program is not countervailable because a diverse and large group of private sector companies representing a wide cross-section of the economy have made a large number of investments in infrastructure facilities at various ports in Korea, including numerous investments at Kwangyang Bay. *See Stainless Steel Sheet and Strip* at 30649.

C. GOK Infrastructure Investments at Kwangyang Bay Post-1991

In *Stainless Steel Plate,* we determined that this program is not countervailable because the GOK's investments at Kwangyang Bay since 1991, in the Jooam Dam, the container terminal, and the public highway were not specific. *Id.* at 15536.

III. Programs Determined To Be Not Used

Based on the information provided in the questionnaire responses and the results of our verification, we determine that the companies under investigation either did not apply for, or receive, benefits under the following programs during the POI:

A. Special Cases of Tax for Balanced Development Among Areas (TERCL Articles 41, 42, 44 and 45)

B. Private Capital Inducement Act (PCIA)

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Free Trade Zones (FTZ) at Pusan and Kwangyang

Interested Party Comments

Comment 1: CAFC's Decision in AK Steel With Respect to Domestic Loans

Respondents state that subsequent to the Department's preliminary determination, the CAFC ruled on the issue of direction of credit and foreign loans, and reversed the Court of International Trade's (CIT) affirmation of the Department's decision in *Steel Products from Korea* that the GOK's direction of credit provided a countervailable benefit to the Korean steel industry. *See AK Steel.* Respondents conclude that based upon the CAFC's decision, the Department must reverse its finding in the preliminary determination regarding the countervailability of the direction of credit.

Petitioners argue that, although the CAFC has reversed certain aspects of the CIT's decision affirming the Department's determination in *Steel Products from Korea,* the ultimate disposition of that decision has no impact upon the Department's ability to countervail the domestic loans in this investigation, because the record in this proceeding contains new evidence that was not before the CAFC in *AK Steel.* Petitioners claim that this new evidence clearly establishes a proximate causal nexus between the GOK's control of the financial system (control which POSCO and the GOK denied, but which the CAFC affirmed) and the benefit of low cost credit to the Korean steel industry. Moreover, according to petitioners, the CAFC's decision pertained only to the lack of a casual nexus for an indirect subsidy finding, *i.e.,* private loans directed or induced by government action, which were received after the end of the *de jure* preferences for steel, and does not impact upon loans received directly from government sources such as the Korean

Development Bank, or any loans received prior to 1987.

Department's Position

A large portion of the comments submitted by petitioners and respondents dealt with the *AK Steel* decision and its relationship to our preliminary determination that the GOK directed credit to the steel industry. The CAFC decision was based upon the Department's determination in *Steel Products from Korea* that the GOK provided a countervailable benefit to the Korean steel industry through its direction and influence over the provision of credit to selected industries. The decision in *Steel Products from Korea* covered the GOK's direction of credit polices through 1991. In subsequent investigations, *Stainless Steel Plate* and *Stainless Steel Sheet and Strip,* which were completed during 1999, the Department determined that the GOK also directed credit to selected industries during the period 1992 through 1997. The CAFC ruling in *AK Steel* does not cover the GOK's directed lending policies after 1991.

As we noted earlier, the Department has not received specific instructions from the Court on the *AK Steel* decision. However, our review of that decision indicates that the CAFC found that there was not sufficient evidence on the record of *Steel Products from Korea* to determine that the GOK provided directed domestic credit to the Korean steel industry between 1985, the year the GOK removed *de jure* lending preferences to the steel industry, and 1991. With respect to pre-1992 foreign loans, the CAFC found that the Department did not establish that the terms of the foreign loans, which were provided through the GOK's control of preferential access to foreign lending, were on ''terms inconsistent with commercial considerations'' as required by the then governing statute. Since the final determination of *Steel Products from Korea,* Congress enacted a new statute and in 1998, the Department codified new substantive countervailing duty regulations. Below, we address the issue of the GOK's control over domestic credit. The Department's position with respect to access to foreign lending is addressed in ''Comment 2''.

Based upon our reading of *AK Steel,* the CAFC did not reject the notion of the GOK directing credit specifically to the Korean steel industry, but rather took issue with the evidence upon which the Department based its affirmative finding. Information which is on the record of this investigation, which was not in the record of *Steel Products from Korea,* indicates that the GOK directed credit to the Korean steel industry through 1991.

In its decision in *AK Steel,* it appears that the CAFC focused on the importance of Korea's second integrated steel mill at Kwangyang Bay, and noted the key role that project played in the Department's decision that the GOK was directing credit to the steel industry. Indeed the CAFC stated:

> If Commerce is correct in describing Kwangyang Bay as essentially a government project, Commerce can plausibly contend that a *de jure* preference program was replaced with a *de facto* system under which industry credit requirements and supplies were both managed by the government. If that premise is incorrect, however, the aggressive targeting theory is clearly unsupported.

Based upon a review of the evidence, the CAFC decided that the information on the record of *Steel Products from Korea* did not support the Department's decision. Therefore, we have reviewed the record of the instant investigation to determine whether there is new evidence on this record to support a conclusion that Kwangyang Bay was essentially a government project. Based upon this review, additional information is on the record of this current investigation to support a determination that the GOK directed credit to the steel industry.

In a speech in March 1981, Korean President Chun Doo Hwan stated that despite the stagnation plaguing steel industries in other countries, Korea intended to expand its steelmaking capacity.[4] In this speech marking the completion of POSCO's fourth phase of construction at Pohang, President Chun stated that his government will give special emphasis to Korea's steel industry and promised to carry on the work of building a second integrated steel plant in Korea. The speech from President Chun was on the record on *AK Steel,* however, the CAFC questioned the relevance of excerpts from his speech because the speech took place before any construction began at Kwangyang Bay. Information on the record of the current investigation places the speech in context of the time frame of the actual decision to build a second integrated steel mill at Kwangyang Bay. At the time of President Chun's speech, POSCO Chairman Park Tae Joon, stated that an evaluation of sites for the second integrated steel plant would be completed in July of 1981, at which time the government would make its final decision. Information on this record also shows that in November 1981, the government selected Kwangyang Bay as the site of the country's second integrated steel works and that groundbreaking for the construction of the Kwangyang steel works began in 1982.

In addition, information from the 1995 KOSA (the Korea Iron and Steel Association) Yearbook reports that the GOK originally designated Asan Bay as the second integrated steel manufacturing site in 1979, but put off construction of the second integrated steel at Asan Bay in 1980, before designating Kwangyang Bay as the site for the construction of the steel mill. According to the publication *Business Korea,* the GOK has been criticized for showing favoritism towards POSCO. The publication noted that POSCO was given free hand with millions of dollars in foreign loans for the construction of the Kwangyang steel mill in the late 1980's. This publication also noted that in 1991 when the GOK was following a tight fiscal policy, foreign loans coming into the country were virtually halted. However, even when the GOK was cutting off the supply of foreign funds, POSCO's application to bring in US$200 million in foreign currency was quickly approved by the government.

Information on the record includes statements from bankers in Korea reporting that through the late 1980's the government directed funds to specially designated sectors such as the steel sector. *See Memorandum on Meetings with Commercial and Investment Banks and Research Institutes in the Countervailing Duty Investigation of Stainless Steel Plate in Coils from the Republic of Korea* dated February 2, 1999 (*February Banker Verification Report*). This verification report was provided in petitioner's February 25, 1999 ''Amendment to Petition'' of this current investigation. The *February Banker Verification Report* also provides information of the role of the Korean Development Bank (KDB) in support of the Korean steel industry. The KDB is and has been since its inception the predominant source of long-term lending in Korea and is used by the government to support GOK industrial policies. According to Korean banking experts, the steel industry directly benefitted from preferential access to KDB lending, and the KDB is still known for preferring the semiconductor, shipbuilding, and steel industries. In addition, other information on the record shows that even in the 1990's the KDB has channeled billions of dollars into

[4] Supporting evidence on this record has been cited in the December 13, 1999 Memorandum to David Mueller from Team, which is on file in the CRU.

sectors favored by the GOK's industrial policies, including the steel industry. During our verification in this investigation, we examined internal KDB loan approvals for DSM and POSCO. According to the KDB's loan approval documents, both POSCO and DSM were ''nationally important industr[ies].'' *See GOK Verification Report* at page 4.

These same financial experts also stated that the GOK can influence commercial bank lending decisions by using the KDB. Korean financial experts stated that when the KDB decides to fund a project, it may be considered as a guarantee from the government. Projects funded by the KDB are receiving tacit government approval for that project, and thus an implicit guarantee is provided to commercial banks in Korea to follow the KDB's lead. *See February Banker Verification Report* at 7.

A review of respondents' outstanding loans which were received before 1992, demonstrates the importance of the KDB financing to the steel industry. A substantial portion of POSCO's pre-1992 outstanding loans are either from the KDB or guaranteed by the KDB. In addition, almost all of DSM's pre-1992 outstanding loans are from the KDB.

In addition, further information on the GOK's direction of credit policies came to light after Korea's 1997 financial crisis. Portions of this information are now on the record of this current investigation. The GOK has acknowledged to the IMF that it has directed lending in the financial sector. As noted above, banking experts and other analysts have stated that the GOK has used the KDB as a tool for directing credit to strategic industries such as steel. Other observers of the Korean financial system have concluded that the GOK has used commercial banks to funnel money into favored industries, and that the GOK has directed banks to provide lending to ''promising'' industries. These experts have concluded that the GOK's directed lending policies have helped build Korea's formidable steel industry.

As noted above, the CAFC decision in *AK Steel* was based upon the evidence of the record on the *Steel Products from Korea* investigation. As detailed above, there is additional information on the record of this current investigation, which in conjunction with prior case precedent, supports a determination that the GOK has directed credit to the steel industry prior to 1992, the period covered by the *AK Steel* decision.

Comment 2: CAFC's Decision in AK Steel With Respect to Foreign Loans

Respondents state that subsequent to the Department's preliminary determination, the CAFC issued its findings on the issue of foreign loans, and reversed the Court of International Trade's (CIT) affirmation of the Department's decision that the GOK's direction of credit provided a countervailable benefit to the Korean steel industry in *Steel Products from Korea. See AK Steel.* Respondents conclude that based upon the CAFC's decision, the Department must reverse its finding in the preliminary determination regarding the countervailability of the foreign loans.

Petitioners argue that although the CAFC has reversed certain aspects of the CIT's decision affirming the Department's determination in *Steel Products from Korea*, the ultimate disposition of that decision has no impact upon the Department's ability to countervail the foreign loans in this investigation, because the record in this proceeding contains new evidence that is not before the CAFC in *AK Steel*.

Department Position

First, we note that the CAFC in *AK Steel* did not disagree with our determination that the GOK controlled the provision of foreign loans and that a disproportionate share of those foreign loans were provided to the steel industry. The CAFC, instead, based its decision on the statutory language as to when a loan provides a countervailable subsidy. In *AK Steel*, the CAFC stated the Department characterized the foreign loans as subsidies on the ground that preferential access to those loans benefitted the Korean steel industry. The CAFC concluded that this was an inadequate basis under the then governing statute for determining that the foreign loans constituted subsidies. Under the statute in effect during the period pertinent to *Steel Products from Korea*, 19 U.S.C. 1677(5)(a)(ii)(1) required that for a loan to be countervailable it must be provided ''on terms inconsistent with commercial considerations.'' The CAFC concluded that the Department did not provide evidence to demonstrate the legal requirement that the foreign loans were provided on ''terms inconsistent with commercial considerations.''

Since the investigation of *Steel Products from Korea*, Congress has amended the statute. With the enactment of the URAA in 1995, section 771(5)(E)(ii) of the Act provides that the standard for determining whether a benefit has been provided is ''in the case of a loan, if there is a difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.'' Therefore, to determine in this current investigation whether the foreign loans received by POSCO and DSM are countervailable, the Department must apply the standards set forth under section 771(5)(E)(ii) of the Act.

As noted above, the CAFC did not disagree with our conclusion that the GOK controlled the access to foreign loans, which were made on terms more favorable than the loans available in the Korean domestic market. Absent GOK approval, a company could not borrow foreign loans and would have to obtain financing in the more expensive, domestic market. Under section 771(5)(E)(ii), a loan program provides a countervailable benefit to the extent that the costs of the loan provided under the government program is lower than the cost of a loan the recipient could actually obtain on the market. Absent the approval from the GOK to participate in this program, a Korean company would be unable to obtain foreign lending and would only be able to obtain loans in the Korean market. Therefore, under section 771(5)(E)(ii) of the Act, the foreign loans received by DSM and POSCO are countervailable to the extent that the interest rates on these foreign loans are less than the interest rates the companies could actually obtain in the Korean financial market. Based upon the statutory requirements set forth under 771(5)(E)(ii), we continue to find these loans countervailable.

Comment 3: Long-Term Won-Denominated Loan Benchmark Methodology

Petitioners argue that the long-term loan benchmark that the Department used to calculate the benefit to POSCO from its won-denominated loans received in 1998 is at odds with the Department's Regulations and the Department's POSCO Verification Report. First, the applicable regulation governing the choice of long-term loan benchmark in section 351.505(a)(2)(iii), states that: in selecting a comparable loan, the Department will normally use a loan the terms of which were established during or immediately before, the year in which the terms of the government-provided loan were established.

Second, to apply this regulatory objective, the Department must consider POSCO's borrowing experience and developments in the Korean financial market in 1998. Petitioners state that according to the Department's POSCO Verification Report, POSCO did not issue bonds or foreign securities before August 1998 due to the financial crisis in Korea. Instead, POSCO turned to subsidized long-term loans. However, late in 1998, after the financial crisis subsided and corporate-bond interest rates declined, POSCO returned to the corporate bond market in August 1998. Thus, petitioners argue that the Department cannot use POSCO's post-crisis borrowing experience as a benchmark to measure the benefit from the government's subsidized loans to POSCO during the crisis period. Therefore, petitioners argue that the Department should use a monthly benchmark comparison and, during months when POSCO did not issue corporate bonds, the Department should use the Bank of Korea's corporate bond index.

Respondents counter that petitioners' cite to section 351.505(a)(2)(iii), is an unequivocal twist in the standard choices the Department uses for comparable benchmarks. Respondents state that the Department used a benchmark in the year that the KDB loan was given in its preliminary determination. Therefore, they argue that petitioners' argument that the Department should use data from a different part of the year, as its benchmark, is an attempt to manipulate a subsidy calculation, and should be rejected by the Department.

Department's Position

Petitioners' proposed methodology for selecting the long-term loan benchmark for the government-provided won-denominated loans is inappropriate in this investigation. The Department's regulations state that the Department will select an interest rate benchmark from the year in which the terms of the government-provided loan were established. *See* section 351.505(a)(2)(iii) of the CVD regulations. The interest rate benchmark selected in this investigation reflects the rate at which POSCO could borrow in the same currency during the year in which the government-provided loan was given. Petitioners have not provided sufficient evidence to dictate a change in the Department's policy. Furthermore, we used the same methodology of selecting the interest rate benchmarks in *Stainless Steel Sheet and Strip* and *Stainless Steel Plate*.

Comment 4: Subsidies Received by Affiliates

Petitioners state that the Department instructed respondents to identify all affiliated companies, and further instructed certain affiliated companies to provide complete questionnaire responses. Petitioners argue that all of these affiliated companies fall under the definition of mandatory respondents because they supply an input product that is primarily dedicated to the production of the subject merchandise or have otherwise engaged in financial transactions with respondents. Therefore, petitioners argue that all subsidies received by these affiliates are attributable to the subject merchandise and should be countervailed.

Respondents counter that while they do not disagree in principle with petitioners, they disagree with the methodology that the Department should employ in allocating any subsidies found to be received by these affiliated parties. Respondents counter that the Department should determine the total *ad valorem* benefit of all relevant subsidies received by each affiliated party and, based on the portion of each affiliate's sales to the respondent company as a percentage of their total sales, calculate the amount of subsidy applicable to the respondents through their purchases from these affiliates.

Department's Position

During this period of investigation, certain of POSCO's and DSM's affiliates have received subsidies under investigated programs which benefit the respondents' steel production, including the production of subject merchandise. For example, certain of POSCO's affiliates have received benefits under certain R&D loan and grant programs. To quantify the benefit from these programs, we have calculated the *ad valorem* subsidy rate by dividing the program benefit by POSCO's total consolidated sales which includes the total sales of POSCO as well as its affiliates. This methodology is consistent with section 351.525 of the CVD regulations.

Comment 5: Exemption of Bond Requirement for Port Use at Asan Bay

Petitioners argue that on more than one occasion, POSCO did not respond truthfully regarding its activity at Asan Bay, until the Department discovered the truth as verification. According to petitioners, these misrepresentations constitute a failure by POSCO to act to the best of its ability. Therefore, they argue, as facts available, the Department should find that (1) POSCO received a specific benefit from the GOK's expenditures on infrastructure at Asan Bay, and that (2) POSCO received a specific subsidy because the company never paid the bond requested by the GOK for POSCO's exclusive use of port berth #1, or (3) at a minimum the Department should use the highest previously calculated rate for infrastructure provided in Korea.

Respondents counter that the issues raised in this investigation regarding Asan Bay were always framed by petitioners and the Department in the context of infrastructure. Respondents claim that a warehouse, unloading equipment and a coil service are not traditionally considered infrastructure and POSCO has not built any infrastructure to date. Furthermore, respondents counter that some of the facilities built in the dockyard area, such as the coil service center and equipment used in the unloading of cargo were reverted to the GOK, for which POSCO is being compensated through free usage until full recovery of its expenditures, pursuant to relevant provisions of the Harbor Act. Respondents claim that in *Stainless Steel Plate*, the Department determined that the program by which companies build facilities at ports that are reverted to the GOK, and then are allowed free usage and the right to collect fees from other users until fully compensated for their costs, does not constitute a countervailable subsidy.

Respondents also counter that petitioners are wrong with respect to the facts concerning POSCO's exclusive use of port berth #1. Respondents claim that POSCO signed an agreement to purchase bonds on the same terms as the companies that obtained the rights to exclusive use of port berths #2, #3, and #4 through an open bidding process; however, POSCO was not permitted to follow through on the agreement, and has instead been required to either build port berth #5 or pay for the construction costs of port berth #1, and receive compensation through free use until it recovers its costs. Therefore, respondents counter that instead of POSCO benefitting from a financial contribution by not being required to purchase the bond, it is being required to incur a far larger outlay of expenses for the construction of port berth #5.

Department's Position

During verification, we found that other companies which received exclusive use of port berths at Asan Bay were required to purchase a bond through the GOK. POSCO was not required to purchase the bond because it was going to build port berth #5. POSCO's argument that it was required to build a port berth is not germane to the analysis as to whether the exemption from the bond requirement provided POSCO with a countervailable subsidy. When POSCO builds the port berth, which will revert back to the GOK under the provisions of the Harbor Act, POSCO will be compensated for its expenditures through free usage of that newly-built port berth until full recovery of its costs under the same Harbor Act. As POSCO has correctly noted, the Department has found this practice under the Harbor Act not countervailable. *See* the discussion of the ''Port Facility Fees'' in *Stainless Steel Sheet and Strip*, 64 FR at 30649.

Therefore, based upon the information gathered during verification, the issue is whether POSCO received a benefit from the bond exemption. Because POSCO was the only company to receive this exemption, the program is specific to POSCO under section 771(5A)(D) of the Act. In addition, a financial contribution was provided to POSCO under section 771(5)(D)(ii). Therefore, we determine that POSCO received a countervailable benefit when it was not required to purchase a bond for the exclusive use of the port berth at Asan Bay.

Comment 6: Highly Advanced National Project Fund (HANP)

Petitioners state that although the GOK claimed that it was unaware of the existence of HANP, an exhibit provided by the GOK in the same response explicitly referenced the HANP. Petitioners also state that at verification, the Department found that a subsidiary of POSCO received a HANP grant. Therefore, petitioners argue that because the parties failed to act to the best of their ability to comply with a request for information, the Department is required to apply facts available, and determine that the HANP program conferred a specific benefit to POSCO. Petitioners also argue that the benefit should be treated as a grant and amortized using the mid-year convention.

Respondents counter that this grant received by POSCO's subsidiary was not originally reported because the GOK and POSCO were unaware of the HANP program. According to respondents, the program is commonly referred to by the GOK as the G–7 project, and the company received the R&D under the STEP 2000 project. Respondents also counter that the grant which was received in 1994 would have been expensed in the year of receipt, pursuant to section 351.524(b)(2) of the Department regulations, because the subsidy is less than 0.5 percent *ad valorem*.

Department's Position

Although the HANP project, as argued by respondents is known by different names, a POSCO affiliated subsidiary did receive a GOK grant which should have been reported in their response. However, because this grant was provided in 1994, and the calculated subsidy was less than 0.5 percent *ad valorem*, it is expensed in the year of receipt in accordance with section 351.524(b)(2) of the CVD regulations. Therefore, no benefit was provided to POSCO from this program during the POI.

Comment 7: Steel Campaign for the 21st Century

Petitioners argue that the GOK's claim that this program is a private initiative organized by the Korea Iron and Steel Association (KOSA), a trade organization with no government involvement and no participation by respondents, has been demonstrated to be false. According to petitioners, record evidence indicates that the GOK and the respondents are active participants in the Campaign. A KOSA report identifies the Ministry of Trade, Industry and Economy (MOTIE) as providing ''fiscal and tax support,'' and the respondents as receiving substantial benefits from various R&D projects. The KOSA report also states that the Campaign funds R&D so as to boost exports and create import substitution savings. Petitioners further state that a program entitled ''Korean Industry in the 21st Century,'' which was never disclosed to the Department in questionnaire responses, was discovered by the Department at verification.

Petitioners also argue that, given respondents' repeated denials, and their not acting to the best of their ability, the Department should use facts available, and find that this program provides an import substitution subsidy, which is specific, and therefore countervailable.

Respondents counter that this is a private initiative by the Korean steel industry, under the auspices of the Korea Iron and Steel Association (KOSA), the industry trade association. Respondents also counter that if there were any benefits specifically offered under this program, one would expect that there would be explicit mention and some attempt at quantification, just as other parts of the report mention. Respondents also counter that if import substitution is done economically and without government involvement, it is a perfectly normal strategy for increasing revenues, and state that petitioners offer no evidence of any specific government involvement in this program.

Department's Position

At the GOK's verification, we obtained a document entitled ''Vision and Development Strategy of Korean Industry in the 21st Century.'' We were unable to determine whether there is a relationship between this program that is administered by MOCIE and the Steel Campaign for the 21st Century, which respondents' claim is handled through KOSA. However, we did not find any benefits given to respondents under either of these programs during the POI.

Comment 8: Whether Assets Revaluation Pursuant to TERCL Article 56(2) Is Countervailable

Petitioners argue that in its preliminary determination, the Department properly countervailed a program which permitted POSCO and DSM to revalue their assets at an earlier time than would otherwise be allowed, and that the Department should maintain its position in the final determination.

Respondents argue that the Department erred in its preliminary determination that asset revaluation pursuant to TERCL Article 56(2) was *de facto* specific to the basic metals sector, and in its calculation of the benefit. According to respondents, this determination cannot stand because the Department examined this program in *Steel Products from Korea* based on the same record evidence in this case, which the CAFC affirmed in *AK Steel*. Respondents also counter that in *Steel Products from Korea*, the Department analyzed and rejected petitioners' theory of dominant or disproportionate use based on the percentage change in the value of a company's assets after revaluation. Respondents claim that in defending the Department's decision to use this methodology before the CAFC, the Department argued that the domestic producers erroneously contend that percentage change information contained within the record is not relevant in the disproportionality analysis, and that with respect to a tax program, it easily enables the Department to distinguish between general and specifically targeted tax schemes without penalizing companies due to their profits or size. Respondents also argue that the CAFC also considered and rejected petitioners arguments on (1) dominant or disproportionate share of the benefit conferred based on a percentage basis rather than on an absolute basis, and (2) the Department's reliance on the information contained in the Korea Listed Companies Association (KLCA) report.

Respondents also argue that if the Department continues to countervail the asset revaluation, the benefit from the asset revaluation program, was calculated incorrectly, which reflects the Department's misunderstanding of the data reported in respondents' May 28, 1999 questionnaire responses. Respondents claim that its May 28, 1999 responses were clarified at verification; therefore, the Department should take the additional depreciation in 1997 as a result of asset revaluation pursuant to TERCL 56(2), and multiply that by the corporate tax rate of 30.8 percent to obtain POSCO's total tax savings in fiscal year 1997.

Petitioners also counter that while they do agree with respondents that the Department's methodology does not accurately reflect the benefit received by respondents in any given year, they argue that respondents' proposed methodology does not accurately represent the true benefits either. According to petitioners, benefits received in fiscal years 1990–1993 should be amortized using their mid-year grant allocation methodology, and benefits received in fiscal years 1994–1998 should be expensed in the year of receipt. Petitioners also counter that the benefits are exceptional because the recipient cannot expect to receive additional subsidies under the same program on an on-going basis from year to year, the program is not automatic, and because this program is undoubtedly tied to the companies' capital structure and capital assets.

Department's Position

We disagree with respondents that the Department should not reconsider the specificity determination made in *Steel Products from Korea*. In *Steel Products from Korea*, there was not sufficient information on the record to indicate that POSCO revalued more of its assets than is generally allowed under Korean law. We noted in that case that the Department had rejected specificity information submitted by petitioners, because it was untimely. In the absence of evidence of *de jure* or *de facto* selectivity concerning the timing of POSCO's revaluation or the method of POSCO's revaluation under the Asset Revaluation Act, the Department determined this program to be not countervailable. *See Steel Products from Korea*, 58 FR at 37351.

In the instant investigation, petitioners have timely submitted information that warrants reconsideration of this program by the Department. Information on this record shows that during the period 1987–1990, companies making an initial public offering were allowed to revalue their assets pursuant to Article 56(2). There were between 14,988 and 24,073 manufacturing companies operating in Korea at that time. However, only 77 companies revalued their assets in 1989, the same year in which POSCO revalued its assets. The basic metal sector accounted for 83 percent of the total revaluation surplus, of which POSCO's revaluation accounted for 91 percent. While we recognize that many factors can affect the relative size of tax benefits claimed under programs (*e.g.*, company size, value of assets, timing of investments, management decisions, capital intensiveness, labor intensiveness), the record evidence indicates that the basic metal industry was a dominant user of this program in 1988/89. We also note that the GOK enacted Article 56(2) on November 28, 1987, and it listed POSCO shares on the Korean Stock Exchange in 1988. POSCO was also, by far, the largest beneficiary under this program.

After clarification of the assets revalued by respondents at verification, we agree with petitioners and respondents that the Department did not properly calculate the benefits from this program in its preliminary determination. However, we disagree with the calculation methodology suggested by petitioners. Petitioners' approach to allocating subsidies was presented to the Department during the comment period of the CVD Regulations. *See* CVD Regulations, 63 FR at 65399. In finalizing its CVD Regulations, the Department considered and chose not to adopt the methodology proposed by petitioners. We continue to follow our policy as explained in the preamble to the CVD Regulations. Further, petitioners' methodology combines allocating some benefits over time and expensing other benefits in the year of receipt, two different methodologies.

However, we disagree with petitioners that this program provides exceptional non-recurring benefits. While there may be instances where these types of benefits could be found to be non-recurring, in this case, that is not possible because the total value of the benefit cannot be determined at the point of the revaluation. This is because the benefit is not the amount of the revaluation surplus, but rather the impact of the difference the revaluation of depreciable assets has on a company's tax liability in each year. Therefore, based on verification of the respondents questionnaire responses, we have used the additional depreciation in 1997, as a result of the asset revaluation pursuant to 56(2), and multiplied that amount by the applicable tax rate in 1997. We then divided the benefit for each company by their respective total sales during the POI.

Comment 9: Countervailability of TERCL Investment Tax Credits

Petitioners argue that Articles 8, 9 and 10 fall under Section 2 of the TERCL, which provides tax benefits for companies engaged in R&D activities. Petitioners also argue that the Department previously found Article 10 countervailable, and it should also find Article 8, technical development reserve funds, and Article 9, technology for manpower development expenses, specific and therefore countervailable. Petitioners argue that Article 8 is specific because it is limited to the manufacturing and mining industries, and it provides for a varying level of benefit to industries. Petitioners argue that Article 9 is also limited on its face to the manufacturing and mining industries.

Petitioners argue that Article 11 confers a type of import substitution subsidy by granting greater tax benefits for patent rights sold or leased domestically rather than abroad, which encourages domestic production as a substitute for importation. Petitioners also claim that Article 88 provides tax credits to companies that build or purchase qualified assets for employee welfare. Petitioners argue that Article 88 is specific because the tax deduction is limited to investments in domestically-produced machines and materials.

Regarding Articles 8 and 9, respondents counter that since the manufacturing sector, by itself, covers a very broad and non-specific range of industries, there is no basis for finding these programs specific. Respondents also counter that petitioners have not cited to any Department precedent for the proposition that participation in such a program, in and of itself, mandates a finding of specificity. Respondents further counter that petitioners have not offered any reasons for the Department to reverse its finding in *Stainless Steel Sheet and Strip*, 64 FR at 30646, that Article 9 is not countervailable.

With respect to Article 11, respondents counter that this program was investigated in *Stainless Steel Plate*, and the Department did not countervail it. Respondents also counter that since the tax incentive is earned for transferring or leasing either a patent right or technical know-how, it is difficult to construe how this fits under the rubric of import substitution.

Finally, with respect to Article 88, respondents counter that this program had been reported and explained in *Stainless Steel Plate*, and that the Department did not countervail this program in that investigation. Respondents also counter that there is no apparent basis for arguing that the benefit received has any bearing on the production of subject or other merchandise, or in this case that investments in worker housing provide any competitive benefit to POSCO.

Department's Position

Regarding Article 8, this article provides a higher tax credit to the capital goods industry than to other manufacturers. Therefore, we determine that the difference in the tax credit provided to the capital goods industry and the tax credit rate provided to all other industries to be a countervailable subsidy. However, we disagree with petitioners argument with respect to Article 9. We previously determined in *Stainless Steel Sheet and Strip* that this program is not countervailable. Petitioners have provided no additional evidence or information to suggest that a program provided to all manufacturing and mining industries is specific under CVD law.

With respect to Article 11, we agree with respondents that this program is not an import substitution subsidy as argued by petitioners. Under an import substitution program, the government provides an incentive to a domestic company to favor domestic consumption over export consumption. For example, in certain of these investment tax credits, the GOK provides Korean companies with a higher tax deduction if they purchase domestically-manufactured machines rather than purchasing imported machinery. This type of program is the classic example of an import substitution program because it seeks to influence the behavior of the party seeking to purchase a good or service. Article 11 does not operate in this fashion. There is no incentive provided to a domestic company by the GOK to purchase patent rights from a domestic company as opposed to a foreign company. Any benefit from this program would confer to a company for not exporting its technology, not to a company which is purchasing the technology.

Finally, we have determined that Article 88 is specific because the tax deduction is limited to investments in domestically-produced machines and materials, and as such is an import substitution subsidy under section 771(5A)(C) of the Act.

Comment 10: Countervailability of Tax Programs TERCL Article 23

Petitioners argue that although the Department failed to initiate an investigation into Article 23, the Department must reconsider its prior decision, especially in light of the European Union's recent findings that this same program was countervailable and specific. Petitioners also argue that this program is an export incentive, as the amount of the allowable loss is limited to a set percentage of foreign exchange receipts from overseas business, and is limited to exporters.

Respondents counter that Article 23 was found not countervailable in *Steel Products from Korea*. Moreover, respondents state that Article 23 permits creation of a reserve for overseas investment losses and not a deduction of income from an overseas business, which is covered under Article 20, as argued by petitioners.

Department's Position

We disagree with petitioners that the Department must reconsider its prior decision of not initiating an investigation on Article 23 given the European Union's recent findings that this same program was countervailable and specific. The Department must base its decisions on U.S. CVD law. (For example, in the referenced EU decision cited by petitioners, it appears that the EU found Korean tax reserves provided to all manufacturing and mining industries to meet the standards of de jure specificity.) We also disagree with petitioners that this program is an export incentive and limited to only exporters. The foreign exchange in question under this tax reserve is foreign receipts earned from an overseas business. Therefore, the income is not earned on exports from Korea. Furthermore, a non-exporter may also be able to earn foreign exchange from an overseas business.

Comment 11: Electricity Discount Programs

Petitioners argue that the Department incorrectly determined that the Voluntary Curtailment Adjustment (VCA) program was not countervailable. Petitioners argue that in its *de facto* specificity analysis, the Department relied solely on one criterion. According to petitioners, there is no indication of how the Department conducted its specificity analysis of dominant or disproportionate use of this program. Petitioners argue that the steel industry received an overwhelming 51 percent of the total benefit during the POI, which is specific, and thus countervailable. Petitioners also argue that this analysis is consistent with Department practice.

Petitioners also argue that record evidence demonstrates that KEPCO provides electricity subsidies through discriminatory pricing schedules for certain industries, such as the steel industry. They argue that the manufacturing and mining industries receive a lower rate than do other industries in Korea, and therefore, a countervailable subsidy is bestowed on these industries.

Respondents counter that petitioners misstate the nature of the Department's specificity analysis. They state that the Department analyzed the detailed breakdown of the number of companies in each sector that used the program, and properly found that this program was used by a wide variety of industry sectors, and that the respondents were not dominant or disproportionate users. Respondents also counter that petitioners ignore the fact that (1) steel companies tend to be very large consumers of electricity, so it would be expected that their savings from this program are relatively high, and (2) in order to qualify for VCA savings, steel companies have to curtail relatively more electricity usage than other sectors.

Respondents also counter that KEPCO's varying rate schedules to different types of industries with different electricity use patterns do not give rise to countervailable subsidies for those industries with lower per unit rates. Moreover, according to respondents, a cursory examination of KEPCO's rate schedule shows that there are considerable variations in the rates applicable to users, including manufacturers, that have different requirements as to voltage level and contract demand.

Department's Position

The examination of electricity tariffs is a complicated issue. However, tariff rates that are applicable to manufacturing and mining industries would generally not be found countervailable. We have recognized in prior cases that electricity tariffs are generally based upon the type and amount of consumption of electricity, and have not countervailed utility rates solely because the rates are provided to large consumers. *See e.g., Pure and Alloy Magnesium from Canada*, 57 FR 30946 (July 13, 1992); *Oil Country Tubular Goods from Argentina*, 62 FR 32307 (June 13, 1997). Therefore, we did not simply analyze one specificity criterion to reach a determination that the VCA program is not countervailable, as argued by petitioners, but analyzed the specificity of this program in light of established Department practice regarding the countervailability of utility programs. As noted by the above-cited case precedent, the fact that certain companies are necessarily large consumers of electricity does not make an electricity program providing tariff reductions to those companies countervailable. KEPCO has established a program whereby electricity customers who use general, educational, or industrial services with a contract demand of at least 1,000 kw can volunteer to reduce their consumption during peak summer periods (July 15—August 31) in exchange for a discount during that period. Based upon our review of the KEPCO customers that volunteered for this program, we found that there were a large number of volunteers from across a wide range of industries. We also found that steel companies were not the dominant or disproportionate volunteers for this program.

Comment 12: Private Capital Inducement Act (PCIA)

Petitioners argue that, in their petition, they provided evidence that POSCO had received government subsidies under the PCIA related to the construction of coal-fired power co-generation facilities at Kwangyang Bay. Petitioners argue that POSCO obfuscated the Department's repeated requests for information on this program. According to petitioners, if POSCO and the GOK had been honest regarding the cogeneration facilities at Kwangyang, the investigation would have taken a different track. Petitioners claim it was not until verification that the Department discovered this misrepresentation.

Respondents counter that contrary to petitioners claim, the petition merely noted that POSCO had plans to build four power plants (two using coal and two using LNG as the power sources) and indicated that they are being built pursuant to the PICA. Respondents claim that it reported that POSCO did not use the PCIA program, which the GOK confirmed. Respondents also counter that in subsequent responses, POSCO and the GOK clarified the nature of POSCO's electric power projects in response to the Department's questions. Furthermore, respondents counter that the Department verified that POSCO did not receive any loans for construction of these plants, nor was there evidence of government contributions for the development of these plants.

Department's Position

At verification we examined the published list of approved PCIA projects during our meetings with GOK officials. An examination of this published list revealed that there were no POSCO approved PICA projects. In addition, during our verification of POSCO, we reviewed the company's accounts and its corporate financing. During this examination of POSCO's records, we did not find any evidence that POSCO received any loans for construction of these plants, nor was there any evidence of government contributions for the development of these plants.

Comment 13: DSM's Denominator

Petitioners assert that the denominator used for DSM is overstated. Petitioners note that at verification the Department concluded that certain materials, such as: other products, (non-subject merchandise purchased and resold) and sub-materials, (products purchased from outside vendors as intended for production materials but were resold without being used in the production) were included in DSM's sales denominator. Petitioners explain that the statute requires the Department to countervail subsidies bestowed upon the manufacture, production, or export of the subject merchandise; the other products and sub-materials which were not manufactured, produced or exported by the respondent. Therefore, petitioners argue that these amounts should be excluded from the sales denominator.

Department's Position

According to the *General Issues Appendix*, attached to the *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062 (July 9, 1993) (GIA), it is the Department's aim to ''capture every part of the sales transaction that could benefit from subsidies'' in the total sales denominator. GIA, 58 FR at 37237. Moreover, it is the Department's long-standing position that production subsidies are tied to a company's domestic production. *See* 351.525 of the CVD Regulations. The presumption that the subsidies at issue are tied to domestic production has not in any way been rebutted by respondents, and respondents have not attempted to show that DSM's ''merchandise'' sales should appropriately be included in the sales denominator. We, therefore, determine that the appropriate sales denominator is the total of DSM's domestically produced merchandise, and we have excluded DSM's ''merchandise'' sales, as these are not sales of goods produced by the company. The Department also verified that DSM included other items which were not produced, manufactured or exported in total sales. As applied to ''merchandise sales'' the Department will remove the value of ''other products,'' and ''sub-materials'' from total sales.

Comment 14: Tax Exemption for Locating at Asan Bay

Petitioners state that DSM received a countervailable benefit from the exemption of taxes related to its purchase of land at Asan Bay. DSM entered a purchasing agreement in 1995, and closed the deal in 1998; however, DSM did not register the land until 1999. Petitioners note that DSM benefitted from this tax exemption for 1998. Petitioners suggest treating this amount as a grant or as an interest free loan.

Respondents refute petitioners allegation, based upon the fact that taxes are only due upon registration of the title for land purchase after the settlement. Notification of settlement was on January 7, 1999, which required DSM to enter into the settlement agreement by January 30, 1999. Based upon the dates of notification and settlement agreement, taxes were not due during the POI.

Department Position

The date of settlement on the land purchased at the Asan Bay was December 31, 1998. After the final settlement, DSM registered title of the land in June of 1999. Under Korean law when title is registered companies are required to pay certain taxes including the registration tax, the education tax, and acquisition tax. However, land purchased in industrial estates is exempt from these taxes. We verified that these taxes are due at the time the title is registered with the court and that DSM received these exemptions on June 30, 1999, which is outside the period of investigation. Under section 351.509(b) of the CVD regulations, the benefit from a tax exemption is the date on which the recipient would otherwise have had to pay the taxes associated with the exemption. We verified that this date is in 1999. Therefore, no benefit is provided under this program during the POI. If this investigation results in a countervailing duty order, we will review this issue in a subsequent administrative review if one is requested.

Comment 15: Price Discount for DSM Land Purchase at Asan Bay

Petitioners state that DSM received a countervailable benefit from paying a discounted price for its land at Asan Bay. Petitioners note that a difference in cost of the land and the amount that DSM paid exists; and this reduction in cost of the land reflects a benefit from the GOK to DSM. This deduction also included the removal of a management fee that was to be paid by DSM. Petitioners point out that DSM had a contract with West Area Industrial Site Management Corp (WAIMC) and was obligated to pay a management fee; however, DSM did not end up paying this fee. Rather the management fee was waived. Petitioners argue that since the GOK sold land to DSM for less than the official price available to other purchasers, the GOK has provided a financial contribution.

Respondents refute petitioners allegation that DSM received a countervailing benefit from the management fee being waived for the land purchase at Asan Bay. First, the purchase agreement was not final until the last payment and title transfer. Second, the fee was waived between the original purchase agreement and the revised 1997 agreement, and there is no legal provision for collecting a management fee. Third, DSM does not have an obligation to pay this fee.

Department Position

DSM began making land payments in 1995 and continued until the last payment in December 1998. The original total land cost to the KDLC included land, management fees and land development costs. During verification, the Department noted a difference between the total cost of land amount compared to the amount that DSM actually paid. This difference occurred because the GOK reduced the purchase price of the land, waived the management fee, and deducted the land development costs. We determine that the purchase price reduction of the land, and the waiver of the fee are specific to DSM and thus countervailable. We also determine that the deduction of the land development costs is not countervailable, because the development was contracted out to another company. Hence, the GOK was not entitled to payment for developing the land.

Comment 16: Infrastructure at Asan Bay

Petitioners state that the industrial estate at Asan Bay benefits the steel industry, and the Department should follow the methodology used for Kwangyang Bay. Petitioners state that DSM has received a benefit from the infrastructure built at Asan Bay by the GOK, such as: roads, industrial water conduits, electricity, transmission lines, and port facilities. This expenditure relieves DSM from the financial liability it would otherwise have to bear. Petitioners state that the value of land DSM purchased increases with the addition of infrastructure, and therefore, DSM receives a benefit by the amount that the land appreciates.

Respondents argue that DSM does not have a facility at Asan Bay, rather they concluded the settlement agreement in 1999. Respondents state that DSM has only purchased land, and the land in question is still undeveloped, therefore, DSM is not receiving any benefits for any infrastructure at Asan Bay.

Department Position

We verified that DSM does not have any facilities at Asan Bay. Therefore, during the POI, the company is not benefitting from any of the GOK developed infrastructure at Asan Bay. Because there is no benefit to DSM during the POI, we need not address the specificity arguments raised by petitioners. With respect to petitioners' novel argument that DSM is accruing a benefit from the Asan Bay infrastructure based on an increase in the value of its land holdings at Asan Bay we note that (1) there is no evidence on the record to indicate that land prices are appreciating at Asan Bay, and (2) assuming that the Department were to adopt such a methodology, the benefit would accrue to DSM at the point in which the land is sold.

Comment 17: Excessive Duty Drawback

Petitioners argue that DSM received a countervailable subsidy from claiming excessive duty drawback. DSM receives duty drawback from certain materials used in the production of subject merchandise. Drawback must be claimed on the amount of an input product consumed in production, if there is a drawback on wastage, then it is considered excessive. The GOK maintains "standard input usage tables," prepared by the National Institute of Technology and Quality (NITQ) based upon POSCO's 1990 production data. DSM used the standard input usage rate from these tables in its duty drawback calculations. Petitioners argue that DSM is not as efficient as POSCO and by DSM using POSCO usage chart demonstrates excessive duty drawback. Petitioners state that DSM used a higher standard rate rather than its own, less efficient usage rate. Being able to use a higher standard rate and claim a greater percentage of imported inputs as incorporated into the subject merchandise constitutes a financial contribution, for the GOK has foregone revenue which is would have otherwise received.

Respondents claim that duty drawback is based on the standard usage rate applicable when a company imports slab as an input for plate for export, and can only be claimed when matching imports of slab for paid import duties. Based upon the context of how the Korean duty drawback operates, there were no over-rebates of import duties.

Department's Position

We have determined this program not to be used because DSM did not receive excessive duty drawback. We verified that the amount of duty drawback received by DSM is based directly on the duty actually paid by DSM at the time of importation of slab. The argument that DSM is a less efficient producer than POSCO does not negate the fact that DSM did not receive excessive duty drawback. Indeed, it supports a determination that DSM did not receive excessive drawback. This is because a less efficient producer would have a higher wastage rate, *i.e.*, it would require more of the imported slab to produce the same quantity of exported plate. However, the amount of drawback is determined by the NITQ's standard usage rate, which according to petitioner, is based upon a more efficient producer's lower wastage rate. Therefore, DSM would not receive the duty drawback on the additional amount of imported slab it requires to produce the same quantity of exported plate as the more efficient producer.

Comment 18: Tariff Rate Quota on Slab

Petitioners claim that during 1998, the tariff rate for imported slab was lowered from 8 percent to 1 percent during the first half of 1998 and up to 3 percent for the second half of the year. According to petitioners, this program is limited by the number of products and therefore is specific. A reduction in tariff rate for imported slab constitutes a financial contribution because the GOK foregoes revenue it would otherwise receive. Petitioners suggest calculating this benefit by taking the difference between the import duty actually paid on imported slabs (1 to 3 percent) and the usual duty (8 percent). The Department should allocate this sum to only the production of the subject merchandise.

Respondents argue that duties on imported slab are paid upon import and rebated upon export (whether at normal or reduced rates). If a lower duty is initially charged upon import then the company receives the rebate of that lower import duty at the time of export. No import duties are ultimately paid on imported slab that is eventually exported. A subsidy could only arise if normal import duty rates were refunded on exports for slab that had paid the lower duty rate upon import.

Department's Position

First, we note that petitioners made this allegation in a July 8, 1999 submission to the Department. Thus, we rejected this allegation as being untimely as set forth in section 351.301(d)(4)(i)(A) of the Department's regulations, and we declined to examine this allegation in this current investigation. *See* ''Memorandum to David Mueller from the Team Re: New Subsidy Allegation in Countervailing Duty Investigation of Certain Cut-to-Length Carbon Quality Steel Plate from Korea'' dated August 11, 1999, which is on file in the CRU. Furthermore, we note that petitioners have failed to demonstrate how a temporary reduction in a tariff rate for slab would confer a benefit upon the export of subject merchandise. Regardless of whether the tariff rate is one percent or eight percent the full amount of the tariff would be returned to the respondents through the duty drawback system when the imported slab is manufactured into plate and then exported as subject merchandise.

Comment 19: Scrap Reserve Fund

Petitioners argue that the GOK provides low-interest or no-interest financing through the scrap reserve fund, thus affording a financial subsidy to DSM. They further observe that the financial contribution benefits all of DSM's production, not strictly subject merchandise. Since the scrap reserve fund is limited to only those producers of steel that have the capability of using scrap, this program is specific.

Respondents state that the loans are directly tied to the purchase of scrap. The scrap reserve fund involves specific purchases of scrap that were not used to produce slab, the input into the subject merchandise. As a result, there is no possibility that these purchases will ever be used to produce slab.

Department Position

The Department verified DSM's scrap reserve fund. The Department verified that DSM purchased all of its slab used in the production of plate. Therefore, DSM does not use scrap in the production of plate. Based upon 19 CFR 351.525(b)(5)(ii), if a subsidy is tied to production of an input product then the Secretary will attribute the subsidy to both the input and the downstream products produced by a corporation. Since scrap is tied to slab and DSM does not produce slab, the Department finds this program not tied to subject merchandise and therefore not countervailable.

Verification

In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with the government and company officials, and examining relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the CRU of the Department of Commerce (Room B–099).

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual rate for each company investigated. We determine that the total estimated net countervailable subsidy is 2.21 percent *ad valorem* for DSM. We determine that the total estimated net countervailable subsidy is 0.95 percent *ad valorem* for POSCO, which is *de minimis.* Therefore, we determine that no countervailable subsidies are being provided to POSCO for its production or exportation of certain cut-to-length carbon-quality steel plate.

In accordance with section 705(c)(5)(A)(i) of the Act, we have calculated an all-others rate which is ''an amount equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates and any rates determined entirely under section 776.'' On this basis, we determine that the all-others rate is 2.21 percent *ad valorem,* which is the rate calculated for DSM.

Company	Net subsidy rate
POSCO	0.95% *ad valorem.*
DSM	2.21% *ad valorem.*
All Others	2.21% *ad valorem.*

In accordance with our preliminary affirmative determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of certain cut-to-length carbon-quality from Korea, which were entered or withdrawn from warehouse, for consumption on or after July 26, 1999, the date of the publication of our preliminary determination in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after November 23, 1999, but to continue the suspension of liquidation of entries made between July 26, 1999 and November 22, 1999.

We will reinstate suspension of liquidation under section 706(a) of the Act for all entries except for POSCO 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 above. 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.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, 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

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33233 Filed 12–28–99; 8:45 am]

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DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–580–836]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Korea

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

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Howard Smith, Frank Thomson, or Lyman Armstrong, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5193, (202) 482–4793 or (202) 482–3601, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all references are made to the Department's regulations at 19 CFR part 351 (1998).

Final Determination

We determine that certain cut-to-length carbon-quality steel plate products (''CTL plate'') from Korea are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''*Suspension of Liquidation*'' section of this notice.

Case History

Since the preliminary determination in this investigation (*Notice of Preliminary Determination of Antidumping Investigations: Certain Cut-To-Length Carbon-Quality Steel Plate from Korea,* 64 FR 41224 (July 29, 1999) (''*Preliminary Determination*'')), the following events have occurred:

In August, September, and October 1999, the Department conducted verifications of Pohang Iron & Steel Co., Ltd. (''POSCO'') and Dongkuk Steel Mill Co., Ltd. (''DSM''), the respondents in the instant investigation. A public version of our analysis and report of the results of this verification is on file in room B–099 of the main Department of Commerce building, under the appropriate case number.

On October 15, 1999, and October 27, 1999, respondents submitted revised databases. Petitioners[1] and respondents submitted case briefs on November 12, 1999, November 15, 1999, and November 16, 1999, and rebuttal briefs on November 22, 1999. On November 23, 1999, the Department held a public hearing concerning this investigation.

Subsequent to the hearing on November 29, 1999, petitioners submitted a letter alleging that respondents' rebuttal brief contained untimely filed new factual information that must be rejected. Specifically, petitioners stated that an opinion from an expert on accounting issues was new information. On December 3, 1999, respondents submitted a letter arguing that this opinion was not new factual information. The opinion in question is that of Dr. Charles T. Horngren, and was found at attachment 4 to respondent's cost rebuttal brief. We agree with petitioners that this opinion constitutes new factual information because it is offered as an ''expert opinion,'' and as such, constitutes testimony rather than a general opinion. Therefore, we find that the information in question is new factual information untimely submitted pursuant to section 351.301(b) of the Department's regulations. Normally such new factual information is returned to the submitter. However, given that this issue was raised so late in the proceeding—less than two weeks before the final determination—for administrative convenience we have not returned these data. We have not considered them in making our final determination in this case. Rather, all copies were removed from the record and destroyed, except that, pursuant to section 351.104(a)(ii)(A), of the Act, we have kept one copy solely for the purpose of documenting the reason for rejecting the new information.

Scope of Investigation

The products covered by the scope of this investigation are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (''HSLA'') steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (''HTSUS'') definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary

[1] The petitioners are Bethlehem Steel Corporation, Gulf States Steel, Inc., IPSCO Steel Inc., Tuscaloosa Steel Corporation, the United Steelworkers of America, and the U.S. Steel Group (a unit of USX Corporation).

equivalents; (4) abrasion-resistant steels (*i.e.,* USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 1998, through December 31, 1998.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by POSCO and DSM covered by the description in the ''*Scope of Investigation*'' section, above, and sold in Korea during the POI to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. 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. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by respondents in the following order of importance (which are identified in Appendix V of the questionnaire): painting, quality, grade specification, heat treatment, nominal thickness, nominal width, patterns in relief, and descaling.

Because neither POSCO nor DSM had sales of non-prime merchandise in the United States during the POI, we did not use home market sales of non-prime merchandise in our product comparisons. *See, e.g., Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Sweden* 63 FR 40449, 40450 (July 29, 1998) (''*SSWR*'').

Changes From the Department's Preliminary Determination

The following is a summary of changes from the Department's *Preliminary Determination.* For a full explanation of DSM and POSCO sales, *see Dongkuk Steel Mill Co., Ltd. Calculation Memorandum,* dated December 13, 1999 and *Pohang Iron & Steel Co., Ltd. Memorandum,* dated December 13, 1999. For POSCO, the Department utilized the most recent affiliated service center data submitted. For DSM, the Department revised certain codes reported for PLQUAL2H/U in accordance with corrections submitted on July 16, 1999. Additionally, the Department made the following changes to DSM's sales database: for certain U.S. sales observations we revised the per-unit international freight as a result of verification, for a certain U.S. sales observation we revised the amount reported for other discounts, and for a certain U.S. sales observation we revised the order date.

For DSM cost we made changes to the following general areas: scrap offset, affiliated input costs, start-up cost depreciation, inventory, and foreign exchange gains and losses. *See Cost of Production and Constructed Value Calculation Memorandum,* dated December 13, 1999.

Verification

As provided in section 782(i) of the Act, we verified all information provided by POSCO and DSM with respect to its sales and costs, including on-site inspection of facilities, the examination of relevant accounting and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the cost verification and sales report. *See Cost Verification Report*—Pohang Iron and Steel Company, Ltd., from James Terpstra to Official File (November 4, 1999); *Cost Verification Report*—Dongkuk Steel Mill Co., Ltd., from Garri Gzirian and Lauren Van Houten to Neal Harper (October 21, 1999); *Sales Verification Report*—Pohang Iron and Steel Company, Ltd. from Frank Thomson to James Terpstra (November 10, 1999); *Sales Verification Report*—Dongkuk Steel Mill Co., Ltd., from Howard Smith and Lyman Armstrong to James Terpstra (November 10, 1999).

Currency Conversion

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.

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, *see Policy Bulletin 96–1: Currency Conversions* 61 FR 9434 (March 8, 1996).

Particular Market Situation

On October 8, 1999, petitioners submitted an allegation that a ''particular market situation'' exists within the meaning of section 773(a)(1)(C)(iii) of the Act. This allegation was based on a variety of information sources that, according to petitioners, show that the Government of Korea (''GOK'') controls the price of steel in the home market to such an extent that the prices cannot be considered to be competitively set, such that home market prices cannot be used as a basis for normal value. Petitioners supplemented this allegation on October 29, 1999.

Petitioners provided four types of evidence to support their allegations: (1) Market research, including interviews with steel industry indicating GOK control of steel prices; (2) a time series of transaction prices showing flat prices (indicative of price controls according to petitioners); (3) a GOK document related to steel prices; and (4) a variety of media articles related to this topic.

On October 19, 1999, respondents submitted a rebuttal to this allegation. Respondents asserted that the allegation was untimely and should be rejected. Respondents also stated that this allegation was fully evaluated in a previous case and found to be without merit. Finally, respondents submitted home market prices data for showing variation in home market prices, which they claimed to be indicative of market forces operating freely.

Regarding timeliness, 19 CFR 351.301(d)(1) requires that an allegation must be submitted within 40 days after the date on which the original questionnaire was transmitted, unless the Secretary extends the time limit. In this case, the questionnaire was transmitted on March 17, 1999, and thus this allegation would normally have been due on or before April 26, 1999.

In considering whether to extend the deadline for this allegation, as permitted by the regulations, we consider, *inter alia,* how the allegation would affect the schedule of the case. *See* 19 CFR 351.302(b). The regulations state that ''unless expressly precluded by statute, the Secretary may, for good cause, extend any time limit established by this part. Furthermore, with regard to the allegation itself, the regulations regarding this provision foresee that such an allegation would lead to the rejection of an otherwise viable home market in favor of sales to a third country as the basis for normal value. *See* 19 CFR 351.404(c)(1). As such, the deadlines are predicated on the assumption that we would need sufficient time to collect and analyze third country sales. Whatever the merits of the allegation in this case, the timing of petitioners allegation would not have allowed for sufficient time to collect and analyze third country sales data. Therefore, we have not extended the deadline for filing the allegation in this case. Consequently, we find petitioners allegation to be untimely filed and have not considered it in our final determination.

Analysis of the Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case and rebuttal briefs from petitioners and case and rebuttal briefs from respondents.

Home Market and U.S. Sales

DSM

Comment 1: *Physical Characteristics of Subject Merchandise*

Petitioners argue that the methodology DSM used for reporting its plate specification information is flawed and cannot be accepted. Petitioners state that DSM's claim of producing high-strength shipbuilding plate from ''general'' quality slabs demonstrates an error in the physical characteristics designated by either DSM's slab supplier or DSM itself. Under either scenario, petitioners feel that DSM's reported plate specification and quality information must be considered unreliable. Petitioners argue that the Department's sales verification report says nothing about manufacturing a high strength product from general quality slab. *See Department's Sales Verification of DSM* at 12. Petitioners contend that it is not possible to create a high-strength plate from non-high strength slab. Petitioners argue that all the chemical properties (such as carbon content) which engenders a CTL plate product with high-strength qualities are added *prior* to the production of slab. According to petitioners, while the subsequent rolling and finishing of a slab (in the production of CTL plate) may improve the mechanical attributes of the product, they cannot alter the chemical composition of the product. Given these assumptions, petitioners claim that the Department cannot have any confidence in any of the plate quality and specification information submitted by DSM.

Petitioners also argue that DSM's claim that general quality plates are produced from high-strength shipbuilding slabs is inconsistent with the statute, the Department's questionnaire, and past practice. Petitioners claim that pursuant to 19 U.S.C. 1667b(a), the Department must compare products that are identical in physical characteristics, and not merely identical in the assigned product specification.

In addition, petitioners contend that there is the potential for manipulation stemming from the use of a methodology that relies on something other than physical characteristics. Petitioners argue that if the Department were to determine that the actual physical characteristics of a finished product are not relevant and the only relevant information is the specification designated on the sales invoices, then companies could legally sell their products in the United States at the lesser specification, when in fact the products actually possess significantly different physical characteristics. Petitioners recommend that the Department use partial facts available given that DSM did not assign costs to the merchandise actually produced; but rather to the merchandise as ordered by the customer. According to petitioners, this would lead to a distorted comparison between home market sales and U.S. sales. Petitioners claim that, as partial facts available, the Department should designate all of DSM's U.S. sales as sales of high-strength shipbuilding plate, to account for the fact that under the flawed reporting methodology, any of the company's U.S. sales could actually be of a high-strength shipbuilding specification.

DSM claims that they reported subject merchandise correctly and that the Department verified the information. DSM asserts that it seldom produces general quality plate using high strength slab, except in order to avoid delays in meeting a customer's order. Further, DSM states that a customer cannot use plate with a general quality certification for a high strength application. Citing the *Verification Report,* DSM argues that the Department randomly selected two months, June and July 1998, and found no instances in which general plate was produced using slabs that were not of general quality.

Department's Position

We disagree with petitioners. During verification, Department officials found one instance where DSM used slabs that were certified to a general quality specification to produce plates that were certified to a high-strength specification. In addition, DSM reported that during the POI, it used both general quality and high-strength slabs to produce plates that were certified to a general quality specification. For the following reasons we have not rejected the reported product characteristics. First, the evidence on the record supports DSM's claim that it produced high-strength plates from slabs certified to a general quality specification, and that it properly reported the quality and specification of such plates. The Department verified that the slabs in question were certified to a general quality specification, and hence DSM classified them as general quality slabs in its inventory system. *See Sales Verification Report* at 9 and exhibit 32. However, the mill test certificate for the slabs showed that their chemical characteristics satisfied the chemical standards of the high-strength specification to which the plates were produced.[2] The fact that the slabs had only been tested in accordance with the general quality specification and, thus, only certified to that specification does not change the fact that, chemically, they also satisfied the requirements of a high-strength specification and were used to produce that specification. Moreover, the plates that were produced from these slabs were tested and found to meet the high-strength specification that DSM reported to the Department. Thus, this method of production does

[2] At verification, DSM officials explained that they select the slabs to be used to produce a plate order based on similarities between the physical characteristics of the slab and the ordered plate irrespective of the quality assigned to the slab in DSM's inventory system.

not demonstrate that DSM's submitted product characteristics are unreliable. Second, at verification the Department found no evidence to indicate that DSM had incorrectly reported the physical characteristics of the plates sold. Furthermore, it is inappropriate to conclude, based solely on the quality of the slabs, that plates that were produced from high-strength slabs and certified to a general quality specification are in fact high-strength plates. The record shows that the production of high-strength plates may involve special hot-mill processing which improves the mechanical properties of certain high-strength steels. Thus, additional factors must be considered before concluding that such plates are high-strength. Moreover, there is no information on the record to show that these products were marketed or sold as a specification other than that for which they were tested and to which they were certified. Finally, the record shows that only a very small percentage of the slabs that DSM used to produce general quality plates were high-strength slabs. For the foregoing reasons, we have accepted the product characteristics as reported.

Comment 2: Commission Expense

DSM focuses a statement in the Department's verification report that one of the selling agents received a lesser commission for each sale. While DSM admits this selling agent received less of a commission for each U.S. sale it was involved in, DSM argues that this agent also received a salary which was reported in DSM's indirect selling expense. This additional compensation was not considered in the Department's analysis.

DSM argues that it is Departmental practice to report commissions paid to independent sales agents, as a direct selling expense and employee's salary, as an indirect selling expense. Accordingly, DSM has properly reported its commission expenses in the United States.

Petitioners did not comment on this issue.

Department's Position

We agree with DSM. We recognize that the sales agent in question received a salary in addition to his commission and that the amount of the salary was properly included in the reported indirect selling expense.

Comment 3: CEP Offset

DSM argues that a CEP offset is warranted because (1) NV is established at a Level of Trade (''LOT'') which constitutes a more advanced stage of distribution than the LOT of the CEP; and (2) the data available do not provide an appropriate basis to determine a LOT adjustment. *See* 19 CFR 351.412(c)(2); *Notice of Preliminary Determination of Stainless Steel Sheet and Strip from the United Kingdom,* 64 FR 90 (January 4, 1999). At verification, DSM demonstrated, and the Department verified, that DKA, not DSM, was responsible for negotiating prices with customers and for invoicing customers in U.S. Channels 1 and 3. In those CEP channels, DSM argues that DKA was also responsible for market research and all interactions with the U.S. customers, including arranging for freight and delivery in the United States and, in Channel 1, U.S. Customs clearance. *See Sales Verification Report* at 8–9; *Sales Verification* Exhibit 9.

Accordingly, DSM states that there is no reseller in Korea that fulfills the role on home market sales that DKA performs on U.S. sales in Channels 1 and 3. As a result, when DKA's selling activities are excluded for purposes of the LOT analysis (CEP LOT), the home market comparison price becomes incomparable because it included significant expenses, communication expenses, rent, and market research. As such, a CEP offset is warranted in this case.

Petitioners claim that a CEP offset adjustment is not warranted in this case. First, petitioners argue that the record evidence fails to indicate that there are significant differences in selling functions between DSM's home market and CEP LOTs. Second, petitioners argue that there is no effect on price comparability on the LOT in this case. As such, the Department should uphold its preliminary determination that U.S. and home market sales were made at the same LOT.

Petitioners claim that, in the event that the Department erroneously determines to make a CEP offset adjustment to normal value for home market sales matched to CEP sales, it must ensure any adjustment is properly applied and not double-counted with the commission offset adjustment. Citing *Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909 (February 23, 1998), petitioners argue that the Department must ''offset any commission paid on U.S. sale by reducing the NV by any home market indirect selling expense remaining after the deduction for the CEP offset, up to the amount of the U.S. commission.''

Department's Position:

We agree with the petitioners. In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the EP or CEP transaction. The NV LOT is that of the starting-price of sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling general and administrative expenses and profit. For EP sales, the LOT is also the level of the starting-price sale which is usually from the exporter to the importer. For CEP sales, the Department makes its analysis at the level of the constructed export sale from the exporter to the affiliated importer.

Because of the statutory mandate to take LOT differences into consideration, the Department is required to conduct a LOT analysis in every case, regardless of whether or not a respondent has requested a LOT adjustment or a CEP offset for a given group of sales. To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the LOTs between the NV and the CEP sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Certain Cut-to-Length Carbon Steel Plate from South* Africa, 62 FR 61731 (November 19, 1997).

As stated in the preliminary determination notice, Dongkuk reported one channel of distribution in the home market through which it sold to distributors and affiliated and unaffiliated end-users. Dongkuk reported no appreciable differences in the functions performed in selling to different types of customers in the home market. Thus, sales to these customers constitute a single marketing stage and, therefore, we continue to find that all of DSM's home market sales were made at one LOT.

In the U.S. market, DSM reported four sales channels: (1) CEP sales through Dongkuk Industries Co., Ltd. (''DKI''), Dongkuk's affiliated trading company in Korea, to Dongkuk International, Inc. (''DKA''), Dongkuk's U.S. affiliate, to unaffiliated customers; (2) EP sales through DKI, to unaffiliated customers;

(3) CEP sales through DKA, to unaffiliated customers; and (4) EP sales from Dongkuk to unaffiliated customers. After adjusting CEP sales in accordance with section 772(d) of the Act, we find no substantial differences in selling activities between EP and CEP sales. Moreover, in comparing home market sales to EP sales and CEP sales, as adjusted under 772(d), we find that DSM performs many of the same functions in selling to its U.S. and home market customers. Therefore, we find that there is no difference in the LOT for NV, EP, or CEP sales. Because there is no difference in the LOT for NV and CEP sales we have not granted DSM a CEP offset. *See Dongkuk Steel Mill Co., Ltd: Level of Trade Analysis,* dated December 13, 1999.

Comment 4: Minor Adjustments Made at the Preliminary Determination Are No Longer Needed

DSM argues that minor adjusts to DSM's database made at the *Preliminary Determination* are no longer needed. First, the Department recalculated credit expense in the home market database because of a database programming error. At the start of verification, DSM corrected the programming that had resulted in incorrect payment dates for a number of their home market sales. *See Sales Verification Report* at 3. Second, the Department had found several missing payment dates and used the signature date as payment date for those sales. Again, at verification, DSM provided the correct payment dates for the invoices that were paid subsequent to the *Preliminary Determination* and the payment date for any remaining unpaid sales. As a result, DSM claims that the Department should have no need to create new payment dates or to make any other adjustments to the sales database.

Petitioners did not comment on this issue.

Department's Position

We agree with the DSM that the minor adjustments to its database are no longer needed. At verification, DSM provided the Department with the correct payment dates for the invoices that were paid subsequent to the *Preliminary Determination* and the payment date for any remaining unpaid sales. *See Sales Verification Report* at 3 and exhibit 1.

Comment 5: Gross Unit Price for Home Surprise Sales 6 and 7

DSM argues that the verification report incorrectly stated that the prices for home market surprise sales 6 and 7 were understated. DSM argues that the value for freight revenue was not included in the variable gross unit price (GRSUPRH); rather for both sales this value was reported in freight revenue (FRTREVH) and was verified as such. *See Sales Verification Report* at Exhibit 24 and 25. However, in the normal course of business, freight revenue and gross unit price are recorded as a single line item in DSM's invoice. In its questionnaire response, DSM reported freight revenue separately from gross unit price and if it was included in gross unit price it would double the amount reported for freight revenue. DSM maintains that the freight revenue accounted for an insignificant percentage of the total value of sales for the two sales, and that the Department found no discrepancies in the reported sales values for the other sales reviewed at verification. As the Department also verified the total reported value and tested the accuracy of DSM's reported data in a variety of ways, DSM argues no adjustment is needed.

Petitioners argue that when errors are discovered at verification, it is the Department's practice to adjust the untested portion of the data in line with the verified findings based on facts available. According to petitioners, these errors are fundamental to the Department's analysis as they relate directly to the prices charged for the foreign like product and as such the Department should increase the gross unit price for all home market sales.

Department's Position

We agree with DSM that no adjustment is needed to the gross unit price of home market surprise sales 6 and 7. At verification we found that the value of freight revenue for both sales was captured in the variable FRTREVH rather than GRSUPRH. Moreover, this discrepancy does not necessitate the use of adverse facts available for all home market sales, as petitioners suggest. If the Department added the difference between the invoice gross unit price and the reported gross unit price, it would double the amount of freight revenue reported for each sale, as this is already captured in another variable, *i.e.,* FRTREVH. Consequently, the Department has made no adjustment to home market surprise sales 6 and 7.

Comment 6: DSM's Model Matching Methodology

Petitioners claim that a comparison of the plate specifications (*i.e.,* PLSPECH) for the home market matching hierarchies to the plate specifications for the U.S. market (PLSPECU) submitted by DSM and POSCO revealed significant discrepancies in the two respondents' methodologies. These discrepancies indicate that DSM's and POSCO's respective specification concordances for ''similar'' products are unreliable. Therefore, the Department should rely on facts available in determining the margins for all U.S. sales not matched to identical PLSPECHs in the home market. Specifically, the Department should assign the highest reported home market price to all sales of non-identical PLESPECHs matching to U.S. sales.

DSM contends that petitioners are most concerned that DSM and POSCO did not report the same suggested matching hierarchy in their questionnaire responses. DSM states that it is unaware of any requirement that respondents report identical matching hierarchies. Further, DSM argues that their company and POSCO were precluded from consulting with one another on this issue due to the proprietary nature of the information. Instead, the companies reviewed the physical characteristics guidelines in the Department's questionnaire; discussed it with their engineers; and made an informed assessment of the most reasonable hierarchy for all specifications sold in the home market.

According to DSM, the hierarchy for the subject merchandise is moot. Both companies sold sufficient quantities of the identical merchandise above cost in the home market to eliminate the necessity of selecting the next most similar product. DSM states that the Department verified the underlying product characteristics associated with DSM's model matching hierarchy. Because this information has been verified as accurate, and because the Department has the discretion to alter the hierarchy, there is no basis for utilizing facts available.

Department's Position

We disagree with petitioners that the reported model matching hierarchies proposed by DSM are flawed and must be rejected. The questionnaire in this case instructed respondents to identify, for every specification sold to the United States, the identical and four or five most similar specifications sold in the home market. In the questionnaire, respondents are requested to explain their identical and similar selections. The Department normally relies on this information in developing its model match concordance. However, if we disagree with any selection of similarity, we can rearrange this hierarchy as appropriate. In this case, petitioners, have not disputed any of these hierarchies at any time prior to the submission of case briefs. Moreover, we have not questioned either party on the use of these hierarchies in any supplemental questionnaire or found specific faults with any chosen selection.

We also note that the similarity in hierarchies can vary based on the fact that each company sells a different mix of specifications in the home market. Moreover, in this case, the great majority of all of the U.S. sales were matched to either identical, or functionally identical, home market specifications. Thus, for the majority of the reported U.S. transactions, second and third next most similar specifications were not relevant to the margin calculations, as they were not utilized as matches.

Comment 7: Application of Adverse Facts Available to DSM's Cost of Production Data

Petitioners contend that the Department should apply total facts available with an adverse inference in making its final determination in this case. According to petitioners, the Department has resorted to the facts otherwise available in similar cases. *See Final Results of Antidumping Duty Administrative Review: Fresh Cut Flowers from Mexico,* 60 FR 49569 (Sept. 26, 1995) (''*Flowers from Mexico*''); *Final Results of Changed Circumstances Antidumping Duty Administrative Review: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Taiwan,* 58 FR 32644 (June 11, 1993) (''*Sweaters from Taiwan*'').

Petitioners assert that DSM's financial statements are materially misstated and, therefore, are unreliable. They question the credibility of DSM's auditors by citing articles published in 1999 in the Korean press, which indicate that this accounting firm ceased operations because of the repeated sanctions imposed by the Korean oversight authorities for poor audits of the companies it audited. Additionally, they claim that, in the course of this investigation, the Department has detected numerous examples where DSM's financial statements are either not compiled in accordance with Korean Generally Accepted Accounting Principles (GAAP), misrepresent relevant financial information, or utilize unreasonable accounting methods. According to petitioners, these problems demonstrate that DSM's financial statements are materially misstated and artificially understate the company's true costs and overstate its income. Furthermore, petitioners argue that these examples also indicate the unreliability of DSM's auditors and their audit report with respect to DSM's financial statements. Petitioners list four instances of such material misstatements:

1. Petitioners argue that DSM violated Korean GAAP by materially overstating the value of its raw materials inventory. Specifically, DSM did not state raw materials inventory at the lower of cost or market value. Petitioners point out that DSM misstated its actual accounting practice in the footnotes to its audited financial statements, by stating that it had valued its inventories at the lower of cost or market value, when in fact it did not do so. To refute DSM's defense that the company's independent auditors did not require this adjustment, petitioners refer to the U.S. Securities and Exchange Commission's (''SEC'') pronouncements on the issue of materiality of misstatements in the financial statements. Petitioners claim that DSM's failure to write-down its raw materials inventory value constitutes a material misstatement.

2. Petitioners argue that DSM, in its treatment and reporting of capitalized 1997 foreign exchange losses, misrepresented its accounting policies, mistranslated certain Korean text, violated Korean GAAP, and employed an unreasonable accounting practice. Specifically, petitioners point out that the company's 1998 financial statements footnote claimed that foreign exchange losses related to debt are amortized over the corresponding maturity periods. In 1998, however, the vast majority of these deferred expenses was transferred to fixed assets and subject to depreciation over asset lives. In addition, according to petitioners, DSM mistranslated Korean GAAP by omitting the fact that the capitalization of certain financial type expenses, other than interest expenses related to certain asset acquisitions, should be disclosed in the footnotes to the financial statements. Therefore, petitioners contend that by not disclosing the transfer of the capitalized foreign exchange losses to fixed assets DSM violated Korean GAAP.

3. Petitioners assert that DSM, in its treatment and reporting of 1998 foreign exchange gains, misrepresented its accounting policies, mislead the Department as to the information in the footnotes of the company's Korean financial statements, and employed an unreasonable accounting practice. Specifically, petitioners point out that the footnotes to the company's financial statements submitted to the Department claimed that foreign exchange gains and losses are amortized over the corresponding maturity periods. However, in fact, the gross amount of the gain was reported on the company's financial statements.

4. Petitioners contend that DSM's extension of the useful lives of its asset represent an unreasonable accounting practice. They note that to support the reasonableness of adopting these asset lives, DSM referred the Department to several sources, none of which, provide an adequate justification for DSM's adoption of longer asset lives for its machinery and equipment.

Petitioners summarize their arguments by asserting that each of the issues presented above represents a material misstatement and alone is a sufficient ground for not relying on DSM's financial statements. Moreover, the cumulative effect of each issue requires the Department to reject DSM's financial statements and to use total facts available. Petitioners argue that, if the Department found these material misstatements based on its limited examination, numerous other instances of material misstatement may also be present in DSM's 1998 financial results. Petitioners contend that these issues demonstrate that DSM has failed to cooperate by not acting to the best of its ability to comply with a request for information, and, therefore, the Department should apply total adverse facts available.

DSM argues that petitioners' request for the use of total adverse facts available is without merit, and should be rejected by the Department. According to DSM, it cooperated fully with the Department in this investigation, and its data submissions were fully verified by the Department. DSM contends that the alleged misstatements identified by petitioners are no more than instances in which petitioners are attempting to second-guess the interpretation and application of Korean GAAP. DSM maintains that the Department should rely on the certified Korean financial auditor's opinion that its financial statements were fairly stated. Furthermore, DSM argues that even if petitioners could identify misstatements in DSM's financial statements, the Department has held that such errors cannot form the basis for the use of adverse facts available absent a showing that the errors prevented the verification of submitted data or otherwise impeded the Department's investigation. DSM argues that no such showing has been, or can be, made in this investigation.

DSM contends that the two cases cited by petitioners in support of their position (*i.e., Flowers from Mexico* and *Sweaters from Taiwan*) are far from being on point. According to DSM, in both cases the Department resorted to facts available only where the Department had determined that the financial statements in question were unreliable, and that it was impossible to verify the accuracy of fundamental questionnaire response data. DSM claims that these cases stand in stark contrast to facts of record in this investigation because, according to DSM, the Department verified without exception each and every element of DSM's antidumping questionnaire responses. DSM contends that the Department was able to link DSM's reported data not only to its accounting ledgers and its audited financial statements and income tax return, but also to journal vouchers, invoices, mill certificates, sales order summaries, and other underlying source documents. Therefore, DSM claims that the Department may not resort to facts available in such a situation. *See Sulfanilic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 61 Fed. Reg. 53711, 53713 (October 15, 1996) (''*Sulfanilic Acid from China*'').

DSM objects to petitioners attempt to impugn the legitimacy of its audit by noting that the accounting firm that performed DSM's audit was subsequently sanctioned by the Korean authorities for deficiencies in unrelated audits conducted for other companies. DSM calls this argument ''guilt by association'', and asserts that the Department may not refuse to accept the professional opinion of DSM's auditor that DSM's financial statements were fairly stated under Korean GAAP in the absence of any indication of irregularities in its audit of DSM. It points out that the Korean Securities and Exchange Commission (KSEC) has never questioned the accuracy or validity of DSM's audited financial statements. DSM also notes that its financial statements were reconciled by the Department to DSM's income tax returns, which were accepted without adjustment by the Korean tax authorities.

DSM rebuts each specific allegation of misstatement in the financial statements made by petitioners:

1. DSM claims that its inventory was properly valued on its financial statements and no adjustment should be made to its costs on account of this issue. DSM argues that petitioners' claim is misguided, and is contradicted by the proper application of the lower-of-cost-or-market rule, under both Korean and U.S. GAAP. DSM points out that its profits in the first-half 1999 are precisely opposite of the substantial losses that would have been incurred had DSM in fact overstated the value of its inventory on hand at the end of 1998.

2. DSM argues that its deferral and transfer to fixed asset value of the 1997 exchange gains and losses associated with the financing of fixed assets was in accordance with Korean GAAP. According to DSM, prior to 1997, Korean GAAP required that foreign currency gains and losses incurred on long-term debt be fully recognized in the year they were incurred. Effective for fiscal year 1997, Korean Financial Accounting Standards were amended to provide that such gains and losses could be accounted for as deferred charges or credits and amortized. The company claims that it followed this accounting treatment in 1997 and amortized both gains and losses on long-term foreign currency obligations in that year. DSM maintains that it also followed Korean GAAP when the deferred losses associated with the financing of capital assets were subsequently transferred to the capitalized cost of those assets when they were placed into service in 1998. The company cites relevant articles of Korean Financial Accounting Standards to support this treatment.

DSM disagrees with petitioners assertion that DSM's accounting treatment of these items was not properly disclosed in DSM's audited financial statements. DSM also disagrees that the translation of the relevant section of the Korean GAAP prepared internally by DSM and submitted to the Department misstates the original text. DSM argues that Korean GAAP does not require a separate disclosure in the notes of the subsequent transfer of previously deferred charges (*i.e.*, foreign exchange loss capitalized in 1997) from one balance sheet account (*i.e.*, deferred charges account) to another (*i.e.*, fixed assets account). Moreover, DSM argues that the issue of disclosure in the financial statements is simply irrelevant because, according to DSM, it fully disclosed to the Department the methodologies it used both in the financial statements and in its submitted data, and the Department verified both the methodologies and the underlying figures. DSM further points out that the Korean Securities and Exchange Commission has never questioned the adequacy of DSM's financial statement disclosure.

3. DSM argues that its accounting treatment of 1998 exchange gains and losses was also in accordance with Korean GAAP. DSM points out that in 1998 the Korean Financial Accounting Standards were amended again, which allowed DSM to make an election to return to the previous rule which prescribed that foreign exchange gains and losses on long-term assets and liabilities ''shall be recognized in the current year.'' DSM claims that it followed this accounting treatment in its 1998 financial statements, and thus recognized the full amount the long-term foreign exchange gains and losses incurred during that year. Due to a translation error, however, according to DSM, the footnote to the English language version of the 1998/1997 unconsolidated financial statements failed to include a reference to this latter change in accounting standards. Thus, according to DSM, while long-term foreign exchange gains and losses were in fact accounted for differently in 1998 than in 1997, this was due to a change in Korean Financial Accounting Standards and does not in any way call into question the consistency and reasonableness of DSM's choice of accounting policies.

4. DSM argues that its useful lives for fixed assets are fully in accordance with Korean GAAP. It asserts that not only were the useful lives specifically concurred with by DSM's financial auditors, but they are supported by an appraisal performed by a certified appraisal firm, by a survey conducted by the Korean Iron & Steel Association, and by statements by the manufacturers of the equipment, all of which attest to the reasonableness of the useful lives adopted by DSM.

Department's Position

We disagree with petitioners that the issues raised concerning DSM's audited financial statements warrant the application of total adverse facts available. The examples of alleged material misstatement cited by petitioners are issues of accounting conventions and principles adopted by company management, as opposed to the reliability of the underlying financial data. At verification, we noted no instances which raise doubts as to the reliability of DSM's underlying financial data. Although the Department agrees that an audit entails a much more thorough testing of the source financial data as compared to a verification, we noted no inconsistencies in the underlying cost information reviewed (*e.g.*, financial accounting system, cost accounting system, and production records). While there are legitimate concerns about whether the specific accounting practices identified by petitioners result in unreasonable per unit costs for antidumping purposes, we find that after reviewing DSM's treatment, of the identified issues, DSM's management applied the requirements of Korean GAAP in a reasonable manner.

Korean GAAP specifies that the market value of inventory as used in the lower-of-cost-or-market adjustment should be based on the net realizable value of the inventory. *See* DSM's Rebuttal Brief, Attachments 2. Korean GAAP is not clear as to whether the net realizable value should be determined based on the estimated sales value for the raw material in question or by starting with the estimated sales value of the finished goods the raw material will be used to produce. Specifically, it states that the net realizable value, ''shall be determined as estimated selling price, less estimated expenses that can ordinarily be expected to occur.'' *See* Cost Verification Exhibit 25. We consider DSM's approach of starting with the estimated sales value of the finished goods a plausible interpretation of Korean GAAP because the ''estimated selling price'' referred to by Korean GAAP could be interpreted as being of the finished good as well as the raw material. Thus, we disagree with petitioners that DSM's decision not to make an adjustment to its inventory for the lower of cost or market supports the position that DSM's audited financial statements are unreliable.

Effective for fiscal year 1997, Korean GAAP provided that all foreign exchange gains and losses related to long-term debt should be capitalized and amortized over the corresponding maturity period for the loans. Effective for fiscal year 1999 and 1998, *if a company elected to do so* (emphasis added), Korean GAAP provides that all foreign exchange gains and losses related to long-term debt may be recognized in full, in the year incurred. While we have concerns about the inconsistent treatment of the foreign exchange gains and losses in 1998 (recognizing the gains over a shorter period than the losses) and its effect on the antidumping duty analysis (*see* Comment 9), the treatment of exchange gains and losses fall within the confines of Korean GAAP. That is, it appears that the capitalization of the foreign currency losses associated with acquisition of equipment and the subsequent depreciation of these losses over the life of the equipment, as opposed to the corresponding maturity period of the loans, is an acceptable interpretation of Korean GAAP.

While we also have concerns about the timing and magnitude of useful life changes adopted by DSM during 1998, we do not consider these changes to constitute grounds for rejecting a company's audited financial statements in their entirety. The new useful lives adopted by DSM were largely approved by a certified independent appraiser and were fully disclosed by the company in its financial statements. While the Korean tax laws prescribe a rigid limit on depreciable lives, Korean GAAP does not set such strict constraints. Korean GAAP stipulates that companies may select estimated useful lives that differ from those in the tax law. It allows the management of a company to use its judgement, within certain guidelines, in determining useful life and depreciation methodology. Based on this, we do not find the new lives adopted by DSM necessarily conflict with Korean GAAP. *See* discussion in Comment 10.

Lastly, we disagree with petitioners that the fact that DSM's auditors have ceased operations due to repeated sanctions imposed by the Korean oversight authorities for poor audits automatically impeaches the DSM audit. Despite the problems identified by the Korean oversight committee related to audits performed on other companies, there is no evidence that similar types of problems are present with regard to DSM's audit. Absent factual evidence specific to DSM, we have no grounds to reject their audited financial statements.

Comment 8: Ending Inventory Balance Valuation

Petitioners assert that DSM has understated its true cost of production by failing to value ending inventory at the lower of cost or market value (which, according to Korean GAAP, should be determined at net realizable value). Petitioners also point out that the net realizable value as it is defined under Korean GAAP, would actually differ from the acquisition cost because it should be net of certain other costs (*e.g.*, selling expenses). Therefore, petitioners argue, because the Department does not have information on how much DSM has understated its costs due to this particular error, the Department should apply the highest known difference between DSM's stated year-end inventory value and DSM's December acquisition cost to DSM's total year-end inventory value and allocate that calculated amount over costs of goods sold.

Petitioners contend that DSM's suggested definition of the ''net realizable value'' of slab is unreasonable. According to petitioners, DSM's definition of the net realizable value of slab (a raw material input to the CTL plate under investigation) ignores the known market value of slab (*i.e.*, the value of year-end purchases of slab by DSM from unaffiliated parties) and instead relies on a derivation involving several estimated values—the estimated value of the finished plates that will be produced from the particular slabs in inventory at the time of valuation, the estimated fabrication costs associated with producing those finished plates, and the estimated general expenses associated with producing those finished plates. Petitioners argue that the Department should not ignore the known market value of the raw material being valued and instead resort to a derived value based on estimates and presumptions. Petitioners also claim that DSM provides no reference to any authority supporting its slab valuation methodology.

DSM contends that its inventories are appropriately valued in its audited financial statements, and, therefore, no adjustment to DSM's inventory value is required or permitted. DSM argues that the Department may not substitute its own judgment on the application of Korean GAAP for that of DSM's outside auditors. According to DSM, the purpose of verification is not to conduct a ''super audit'' of the company's financial statements, but rather to determine (1) that the submitted costs reconcile with the audited financial statements, and (2) that the resulting costs fairly reflect the actual unit costs of producing subject merchandise, as required for calculating COP and CV. DSM argues that any attempt on the part of the Department to override the accounting treatment specified in a company's audited financial statements is directly contrary to section 773(f)(1)(A) of the Act.

DSM argues that any conclusion that DSM or its auditors failed to follow Korean GAAP in the valuation of DSM's raw materials inventory is unsupported by any information on the record in this investigation. According to DSM, under Korean GAAP, the correct valuation of raw materials inventory for purposes of applying the lower-of-cost-or-market rule is net realizable value, and not the replacement value. The net realizable value, in turn, would be determined by calculating an estimated selling price for the finished product (*i.e.*, plate) and subtracting fabrication and general expenses. DSM disagrees with the method where the average purchase price for slab in December of 1998 is used as raw material year-end inventory value because DSM is not in the business of selling slab. DSM claims that the year-end raw material inventory value when determined according to its method provides no grounds to conclude that there was a sharp decline in value that would have required a write-down under Korean GAAP. DSM argues that any decline in value of raw materials was due to the fact that the majority of DSM's slab was imported, and the fluctuation in the Korean won and the general instability caused by the Asian crisis led to significant fluctuations in the won-denominated price for slabs. DSM asserts that, even assuming that the market value of its raw materials inventory had declined sharply as of the end of 1998, the decline would not produce a loss material enough to require an adjustment to inventory under Korean GAAP.

DSM claims that the Department's normal policy regarding the treatment of inventory write-downs that have been made in a DSM's audited financial statements appears to be that such write-downs are normally included in cost of production for the period. At the same time, according to respondent, write-downs that are not reflected in the company's cost of goods sold for financial accounting purposes are not included in COP or CV. *See Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit From Thailand*, 60 FR 29553, 29571 (June 5, 1995) (''*Pineapple from Thailand*''); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Results of Antidumping Duty Administrative Reviews*, 62 FR 2081, 2118 (January 15, 1997) (''*Antifriction Bearings-1997''); Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 66472, 66495 (December 17, 1996) (''*Antifriction Bearings-1996*''). DSM argues that if the Department makes an inventory adjustment where no write-down was made for financial accounting purposes, this would violate the requirement that COP and CV be based on the actual costs of the company. *See IPSCO, Inc.* v. *United States*, 965 F.2d. 1056 (Fed. Cir. 1992).

Finally, DSM claims that, even if the Department were to erroneously determine that some adjustment is appropriate to DSM's reported costs to account for an apparent decline in the value of DSM's raw materials inventory, the adjustment proposed by petitioners would wildly exaggerate any possible decline in inventory value and would amount to an unjustified and punitive overstatement of DSM's actual costs.

Department's Position

We disagree with DSM that the Department's practice is to only consider the write-downs that are reflected in the company's cost of goods sold for financial accounting purposes. The antidumping law requires the Department to base its calculation of costs upon the costs recorded in respondent's books and records unless doing so would be distortive. Section 773(f)(1)(A) of the Act provides that for purposes of calculating COP and CV, ''[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, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise.''

In the instant case, Korean GAAP requires the application of the lower-of-cost-or-market rule to the company's inventory valuation. The purpose of this rule, which is also a part of the U.S. GAAP, and International Accounting Standards, as well as many other national accounting systems, is to comply with the one of the basic accounting measurement principals—the ''matching principle''. This accounting principle, in the context of inventory valuation, requires that a loss of inventory value be reflected as a charge against the revenues of the period in which it occurs. Different accounting systems, though, may differ on the specifics of the lower-of-cost-or-market rule, including the definition of the term ''market.'' The information on the record demonstrates that the Korean GAAP defines this term as ''net realizable value.'' However, as we noted above, Korean GAAP is not clear as to whether the net realizable value should be determined based on the estimated sales value for the inventory item in question (*i.e.*, raw materials in this case), or by starting with the estimated sales value for the finished goods the raw material will be used to produce.

We agree that choice of the method, just like the application of the lower-of-cost-or-market rule in general, may depend upon the specific facts and circumstances under consideration, and calls for the application of professional judgement. We believe that it is conceivable that both methods of calculating net realizable value may be acceptable under Korean GAAP. However, in this specific case, the method utilized by DSM distorts the costs because, the estimated future profits from the finished product sales mask the loss in raw materials inventory value that occurred during the POI. In the current case, we found that the method based on the sales value for raw materials is more appropriate because it more accurately reflects the costs the company incurred during the POI by utilizing the market prices readily available for this particular inventory item. Therefore, we adjusted DSM's costs to include the loss in raw materials inventory value that occurred during the period of investigation.

Comment 9: Foreign Exchange Gains and Losses

Petitioners argue that, while DSM's reclassification of 1997 long-term foreign exchange losses incurred on monetary liabilities related to specific capitalized assets may be allowed under Korean GAAP, it nevertheless is unreasonable and distorts the company's costs. Accordingly, petitioners assert that reclassification should be rejected by the Department. They contend that gains or losses incurred on monetary liabilities such as loans (or financial obligations) should remain tied to those liabilities, rather than being re-assigned to non-monetary assets. In addition, petitioners assert that DSM's treatment of its foreign exchange losses is inconsistent with its treatment of foreign exchange gains (*i.e.*, DSM's foreign exchange gains are amortized over the terms of the underlying financial instruments while its foreign exchange losses are depreciated over the useful life of its assets). This, according to petitioners, may lead to miscalculation of carry forward amounts from prior years that should be reflected in the current year. Therefore, petitioners contend that, the Department does not have the information to make the treatment of its foreign exchange gains consistent with the treatment of its foreign exchange losses and cannot reasonably determine the accurate amount of foreign exchange gains and losses for the current year. Accordingly, petitioners argue that the Department should apply adverse facts available with respect to this claimed adjustment by disallowing any foreign exchange gains and assuming the largest amount of foreign exchange losses incurred in the current year. The petitioners contend that, at a minimum, the Department should assume that all of these foreign exchange losses relate to the current period, and increase DSM's submitted G&A costs by the full amount related to the reclassification.

DSM argues that its accounting treatment of 1998 exchange gains and losses was in accordance with Korean GAAP. According to DSM, while long-term foreign exchange gains and losses were in fact accounted for differently in 1998 than in 1997, this was due to a change in Korean Financial Accounting Standards and does not in any way call into question the consistency and reasonableness of DSM's choice of accounting policies. In addition, DSM argues that its deferral and transfer to fixed asset values of the 1997 exchange gains and losses associated with the financing of fixed assets was in accordance with Korean GAAP. DSM objects to petitioners suggestion that the gains or losses incurred on long-term obligations should remain tied to those liabilities as lacking any accounting authority, and points out that this treatment would not be supported by either Korean or U.S. GAAP. DSM points out that, notwithstanding the fact that DSM, in accordance with Korean GAAP, recognized the full amount of the long-term foreign currency gains and losses in its 1998 income statement, for purposes of the antidumping response, DSM amortized the gain over the remaining life of the underlying obligations and reported only the current portion of this gain as an offset to its reported interest expense for COP and CV.

Department's Position

Section 773(f)(1)(A) of the Act requires the Department to base its calculation of costs upon the costs recorded in the books and records of the respondent, provided such records are kept in accordance with the local GAAP, unless doing so would be distortive. In the instant case, while we agree with DSM that its treatment of foreign exchange gains and losses for the purposes of financial reporting may be consistent with Korean GAAP, we consider the inconsistent treatment of foreign exchange gains and losses to be distortive.

DSM's inconsistent treatment of foreign exchange gains and losses results in losses being amortized over the life of fixed assets, whereas the gains are being amortized over the life of loans. This inconsistency is of particular concern when the same loans which generated the 1997 foreign exchange losses assigned to fixed assets also generated a portion of the foreign exchange gains recognized in 1998. As a result, the foreign exchange losses from those loans are being depreciated over a significantly longer period than the foreign exchange gains from the same loans. This results in the smoothing out of losses and the recording of gains (*i.e. income*) in the current period of time. In order to neutralize this inconsistent treatment, we consider it appropriate to amortize the foreign exchange losses in question over the life of the loans, as opposed to the life of the equipment. This treatment is both consistent with DSM's reported treatment of its 1998 foreign exchange gains and with the Department's preferred method for foreign exchange gains and losses related to long-term debt.

Comment 10: Extension of Useful Lives of Depreciable Assets

DSM contends that the Department erroneously overstated its depreciation expense in the preliminary determination. DSM states that the antidumping law requires the Department to base its calculation of costs (including depreciation expense) upon the costs recorded in the books and records of the respondent unless doing so would be distortive, citing *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From France*, 64 FR 30820, 30836 (June 8, 1999) (''*Sheet and Strip from France*''); *Silicon Metal from Brazil: Notice of Final Results of Antidumping Duty Administrative Review*, 64 FR 6305, 6321 (February 9, 1999) (''*Silicon Metal from Brazil*'').

DSM maintains that the equipment acquired for Plate Mill #2 had never been operated and remained in mint condition at the time DSM acquired it. DSM claims that petitioners' reliance on POSCO to define an industry practice is misplaced because the shorter useful lives used by POSCO reflect a different election under Korean GAAP, and not a different practice with respect to the determination of the actual, economic useful lives of the assets.

DSM refers to *Notice of Final Determination of Sales at less than Fair Value: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR 30664, 30684 (June 8, 1999) (''*Sheet and Strip from Korea*'') as having similar circumstances and outcome. DSM claims that in that case the Department accepted the respondent's depreciation expense as reflected on the audited financial statements, even though there has been a change in depreciation methodology and useful lives from prior periods, because the respondent in that case ''provided evidence that its change in depreciation methods and useful lives were reasonable, and that the change occurred in a time period prior to the initiation of the investigation.'' DSM contends that it, too, has demonstrated that the depreciation methodology and useful lives it has used are reasonable, and that the changes in question were adopted well before the POI and before the initiation of this antidumping investigation.

DSM also claims that a major portion of the Department's adjustment to DSM's depreciation expense in the preliminary determination is unrelated to the determination of the appropriate useful lives for fixed assets. Rather, it relates to the change in depreciation convention used for determining the depreciation expense. Specifically, prior to 1998, DSM followed the ''six-month convention'' for determining depreciation. Beginning in 1998, however, DSM began calculating depreciation on a monthly basis, so that depreciation was determined with reference to the month the asset was actually placed into service. DSM argues that, while both conventions are permissible under Korean Financial Accounting Standards, the monthly convention applied by DSM is inherently more accurate than the six-month convention. DSM presents an example where, under the monthly convention, a machine installed in November of 1998 would be depreciated in 1998 only for the two months in which it was actually in service during the year. Under the six-month convention, however, the same machine would be depreciated for a full six months, as if it had been installed on July 1. Similarly, machinery installed in June of 1998 would, under the six-month convention, be depreciated for a full year, as if it had been installed on January 1. DSM also points out that this change in depreciation convention was determined to be a reasonable change in accounting methodology for fiscal year 1998 by DSM's outside auditor.

According to DSM, the Department's adjustment in the preliminary determination ignored the fact that DSM also revalued upward its fixed assets in 1998. This upward revaluation increased DSM's depreciation expense. DSM claims that if the Department intends to rely upon the previous useful life figures used by DSM prior to 1998, then it must also use the original asset values.

In conclusion, DSM asserts that, for the reasons stated above, and consistent with the Department's decision in *Sheet and Strip from Korea* and long-standing precedents, the Department should eliminate the adjustment to DSM's depreciation expense made in the preliminary determination and instead use the actual depreciation expense for the subject merchandise reported by DSM and verified by the Department.

Petitioners assert that DSM has massively understated its depreciation costs by extending the useful lives of depreciable assets, using new asset lives that are unreasonable. Petitioners argue that the revaluation of assets and the restatement of asset lives are not inextricably linked, but rather independent decisions having no direct bearing on one another. Therefore, according to petitioners, the Department should reject DSM's extension of asset lives.

Petitioners assert that claims by manufacturers of equipment that their machinery and equipment is still functional after 20 years are irrelevant because the functionality of equipment over an extended period relates to the magnitude of repair and maintenance performed. For the same reason, petitioners maintain, the KSA's survey is not relevant to the issue at hand, because different companies may have different policies on equipment maintenance. In addition, petitioners point out that the asset lives referred to by DSM relate to new assets, while most of the DSM's newly acquired assets had not been operated for fourteen years, and not been maintained for six years. They also note that it is unclear from the information provided by the respondent exactly which of the fourteen-year old equipment was in ''mint condition,'' and which had already been installed in Mexico by the previous owners.

Petitioners argue that the finding of the certified appraiser that provided the basis for DSM's change in useful lives should be ignored because, the appraisal was not conducted with professional due diligence. Petitioners claim that the appraiser was unaware of the fact that the equipment in question spent over a decade in Mexico before it was purchased by DSM. They also contend that the appraiser did not examine any information on POSCO's plate equipment to compare it to DSM's equipment. Petitioners claim that DSM in several instances did not follow the useful lives guidelines established by the Korean Appraisal Board (''KAB''). Petitioners note that, for example, the lives assigned to certain equipment exceed the limits indicated in KAB guidelines.

Petitioners claim that by adopting extended asset lives DSM violated a fundamental accounting convention. That convention, according to petitioners, is the practice of following particular accounting techniques applicable to the company's industry. Specifically, petitioners refer to useful lives used by POSCO (*i.e.*, up to 9 years), which is the only other major producer of CTL plate in Korea, as being indicative of the useful lives that would have been used by other Korean producers of the same products.

Petitioners also claim that, even though DSM changed its useful lives policy prior to the initiation of the case, it was already clear at that point to all the parties involved in the investigation, based on the statistics and dynamics of the DSM sales in the United States, that an antidumping investigation was practically unavoidable. Petitioners assert that this was at least one of the factors DSM considered in switching to an accounting policy reducing the reported costs.

Petitioners contend that the cases cited by DSM in support of retaining the company's submitted depreciation expenses are distinguishable from the current situation. According to petitioners, in *Sheet and Strip from France, Silicon Metal from Brazil* and *Sheet and Strip from Korea*, the respondents' submitted costs were not found to be unreasonable (*i.e.*, distorted), while in the instant investigation petitioners claim that DSM's submitted depreciation expenses do distort the company's actual costs.

Department's Position

Sheet and Strip from Korea represents one of the most recent cases where the Department identified the factors it considers in deciding whether a change in an accounting method, or estimate, should be allowed for the purposes of COP and CV calculations. That is, the Department, while relying on a company's normal books and records, analyzes the reasonableness of the newly adopted accounting method, and considers if the fact, or an expectation, of being involved in an antidumping investigation might have played a role in the company's decision to change its accounting practice (*see Sheet and Strip from Korea*, 64 FR 30664, 30684 (June 8, 1999)). In the instant case, within months of initiation of the investigation, DSM made three changes affecting its depreciation expense calculations: revaluation of fixed assets, change in depreciation convention, and extension of useful lives.

We agree with DSM that revaluation of fixed assets and a change in depreciation convention may result in more accurate cost reporting. The revaluation of fixed asset values restates amounts recorded in prior years to current currency levels. We also agree with DSM that the new month-of-acquisition convention for when to start depreciating an asset, being in conformity with Korean GAAP, reasonably reflects the costs, and is generally more accurate than the six-month convention previously used by the company. Therefore, we allowed these two changes to the company's depreciation methodology.

However, we disagree with DSM's assertion that it has demonstrated that the new useful lives are reasonable. Pursuant to section 773(f)(1)(A) of the Act, the Department ''shall consider all available evidence on the proper allocation of costs, * * *, if such allocations have been *historically used* by the exporter or producer *in particular for establishing appropriate amortization and depreciation periods.*'' (emphasis added) In 1998, DSM departed from its historical useful life policy by aggressively extending asset lives, which resulted in a dramatic reduction in depreciation expenses. This is distortive because it understates the actual depreciation expense incurred during the POI as well as understating the depreciation expense for the current fiscal year.

DSM refers to useful life guidelines established by the Korean Appraisal Board (''KAB'') as support for the company's revised asset lives. However, we agree with petitioners that the useful lives DSM assigned to certain equipment exceed the limits indicated in KAB guidelines. Furthermore, the KAB guidelines require that the condition of the equipment in question should be taken into account when choosing an appropriate life within the established range. As we stated in our Cost Verification Report, all the opinions and guidelines provided by DSM to support the extended useful lives referred to the lives of new equipment. *See Cost Verification Report* at 12. However, it has been established in the course of investigation that the equipment DSM acquired for Plate Mill #2 was not new. The September 1998 article from *Steel Times International* supplied by DSM shows that some of the equipment was already installed by the Mexican company and had to be dismantled (*see* DSM's November 8, 1999, submission at Attachment 1). Therefore, we agree with petitioners that it is unclear from the information provided by DSM exactly which components of the fourteen-year-old equipment were in ''mint condition.''

Moreover, even if we were to assume that, as DSM claims, this equipment had never been operated, fourteen year old equipment is still subject to obsolescence, if not other factors commonly associated with a ''moth balled'' asset. Nevertheless, DSM assigned to these assets the useful lives that in certain cases even exceeded the upper limits established by KAB for these types of assets. *See Cost Verification* Exhibit 8. For these reasons, we believe that the longer useful lives distort the reported costs of production by allowing respondent to recognize a small amount of depreciation in a given year. The resulting distortion understates the true actual depreciation expense for the period, thereby resulting in lower reported total cost of production. Therefore, we have adjusted the new extended useful lives, and applied to both the COP and CV calculations the lives historically used by the company because this approach more consistently and accurately captures the costs.

Comment 11: Startup Adjustment

DSM argues that its audited financial statements reasonably accounted for the costs of construction, test, and start-up of Plate Mill #2. DSM claims that this is the accounting treatment followed by DSM for financial accounting purposes, which is in accordance with Korean GAAP, and which has been accepted by the Department in previous cases.

DSM argues that it did not request the startup adjustment provided for in section 773(f)(1)(C) of the Act because, according to DSM, the purpose of section 773(f)(1)(C) is to adjust costs for purposes of calculating COP and CV under the antidumping statute when a respondent's normal accounting system fails to account for the effects of start-up operations. DSM contends that this is an exception to the general rule in section 771(f)(1)(A) that costs shall be calculated based on the books and records of the producer, when those books are maintained in accordance with GAAP. Therefore, according to DSM, because its normal costs already reasonably account for the effects of start-up operations, no adjustment to DSM's normal costs under section 773(f)(1)(C) is necessary. *See Notice of Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above (''DRAMs'') From Taiwan*, 64 FR 56308, 56318–56319, (October 19, 1999) (''*DRAMs from Taiwan''); Micron Technology, Inc.* v. *United States*, 893 F. Supp. 21, 36 (CIT 1995); *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod From Canada*, 63 FR 9182, 9186–9187 (February 24, 1998) (''*Wire Rod from Canada*''); and *Micron Technology, Inc.* v. *United States*, 893 F. Supp. 21, 36 (Ct. Int'l Trade 1995).

DSM also argues that even if the Department were to determine that the criteria for an adjustment under section 773(f)(1)(C) are relevant to this case, DSM's new plate mill clearly satisfies the criteria for startup operations under the statute (*i.e.*, it is a new production facility and requiring substantial new investment). Furthermore, DSM asserts that it has demonstrated that its production levels at Plate Mill #2 during the first five months of 1998 were limited by technical factors uniquely associated with the start of commercial production. Therefore, DSM contends that no adjustment should be made to its reported costs, as reflected in DSM's audited financial statements.

Petitioners contend that the Department should adjust DSM's COM to eliminate DSM's startup adjustment. Petitioners note that, according to 19 U.S.C. § 1677b(f)(1)(C)(ii), ''Adjustments shall be made for startup operations only where—(I) a producer is using new production facilities or producing a new product that requires substantial additional investment, and (II) production levels are limited by technical factors associated with the initial phase of commercial production.'' Petitioners argue that DSM did not satisfy the first prong of the statute because the opening of the Plate Mill #2 production in the first half of 1998 represented simply an expansion of the capacity of an existing production line (*i.e.,* extension of existing plate production in Pohang). With respect to the second prong, petitioners argue that DSM did not satisfy it either because: (a) DSM did not provide evidence demonstrating that production quantities were limited; (b) the company's operations were not limited by technical factors, but rather, were limited because its employees were on vacation; (c) the capacity utilization DSM defined as commercial was actually achieved in the middle of the claimed startup period; and, (d) DSM failed to link the three technical factors it claimed to have limited production levels with the production process, or explain how these factors actually limited the production. Therefore, according to petitioners, DSM has failed to satisfy either prong of the startup adjustment test under the statute and the Department should deny the claimed startup adjustment entirely.

Petitioners disagree with DSM's position that the statutory criteria for a startup adjustment is not relevant and that the only criteria is whether the Plate Mill 2's treatment was consistent with Korean GAAP. Petitioners contend that, even if this is true, the Department must reject DSM' startup calculations, because DSM has not shown that the mill's treatment was in accordance with the Korean GAAP (which, according to petitioners, distinguishes the current case from *DRAMs from Taiwan* and *Wire Rod from Canada* cited by DSM) and that its treatment reasonably reflect DSM's actual costs.

Department's Position

We agree with DSM, in part. Section 773(f)(1)(C) of the Act provides for a claimed start-up adjustment in cases where a respondent has not already done so in its normal books and records. Nevertheless, under section 773(f)(1)(A) of the Act, the Department is directed to follow the normal records of the exporter or producer if such records are kept in accordance with the producer's home country GAAP and reasonably reflect the costs associated with the production of the merchandise. Therefore, because DSM's normal records already accounted for the start-up operation, we must follow such treatment if it reasonably reflects the costs associated with the production of the merchandise.

However, we have determined that the DSM's accounting method for startup period costs is distortive in two respects: First, it overstated the period of startup and, therefore, understated the reported costs. DSM asserted that its production levels at Plate Mill #2 were limited by technical factors uniquely associated with the start of commercial production during the first five months of 1998. However, at verification, we found that, from the end of March through May, the daily production quantities were relatively the same as the daily production levels for the three months subsequent to DSM's designated end to the start-up period. Therefore, we identified the point at which DSM reached normal production levels and have adjusted the start-up period costs accordingly.

Second, under DSM's method, the company capitalized the startup period costs net of startup period sales. We agree that this approach may be acceptable for financial accounting purposes because, if a company does not include the same sales in its gross sales figure on its financial statements, the effect of such treatment on the company's net income figure is minimal. However, for COP and CV calculations, we consider this methodology to be distortive because the same startup period sales that are included in the home and U.S. sales files, are, at the same time, used as an offset to the costs. Therefore, in calculating our adjustment, we eliminated the effect of the startup period sales on the startup period costs. For further explanation of our findings at verification, *see DSM Cost Verification Report*, dated October 21, 1999. Consequently, we have adopted DSM's treatment of startup costs except for these two corrections, because its methodology, otherwise accurately reflects costs associated with production of the subject merchandise.

Comment 12: Transactions with Affiliated Entities

DSM contends that, in the final determination, the Department should eliminate the adjustment it made in the preliminary determination on purchases of slab through two affiliated trading companies, Dongkuk International, Inc. (''DKA'') and Dongkuk Corporation (''DKC''), and should base its valuation of DSM's slab costs on the prices reported by DSM for these slab purchases as reflected in DSM's normal cost accounting system. DSM argues that the major input rule does not apply to these slab purchases because DKA and DKC did not produce the slabs. According to DSM's interpretation of the Act, while section 773(f)(2) of the Act—the ''Transactions Disregarded'' rule applies to transactions between any affiliated persons, section 773(f)(3)—''the Major Input Rule'' applies only to situations when an affiliated person is involved in production of a major input to the merchandise. DSM cites section 773(f)(3) which refers to the case ''of a transaction between affiliated persons involving the *production* by one of such persons of a major input to the merchandise'' (emphasis added). DSM asserts that there is an apparent contradiction between this section of the Act and section 351.407(b) of the Department's antidumping regulations, which refer to ''a major input *purchased* from an affiliated person'' (emphasis added). DSM notes that, in the event of a conflict between section 773(f)(3) and the Department's regulations, the statutory language governs.

DSM argues that the intent of major input rule, as explained in SAA to the Uruguay Round Agreement Act, is to prevent manipulation of costs between affiliated producers, and not just any affiliated parties. DSM disagrees with the Department's reasoning in such cases as *Notice of Final Determination of Sales at Less Than Fair Value—Stainless Steel Round Wire from Canada*, 64 FR 17324 (April 9, 1999) (''*SSRW from Canada*''), where the Department explained that the intent of major input rule and the related regulations is ''to account for the possibility of shifting costs to an affiliated party. This possibility arises when an input passes to the responding company through the hands of an affiliated supplier, regardless of the value added to the product by the affiliated supplier.'' DSM contends that the Department's decision in *SSRW from Canada* is directly contrary to the language and intent of section 773(f)(3) and should not be followed in this investigation. DSM further asserts that the statutory language with regard to the major input rule is unambiguous, and allows for only one interpretation: the affiliated person must be engaged in the ''production'' of the merchandise, or the rule does not apply. As to the ''possibility of shifting costs to an affiliated party'', DSM claims that where the Department knows the actual price charged by an unaffiliated producer of the input (*i.e.*, the market value), and where the affiliated supplier performs no substantive role in the transaction, such a possibility does not exist.

DSM proceeds with an argument that DSM should be even entitled to value the purchases it made through DKA and DKC at the price paid by the affiliates to the unaffiliated suppliers, not the higher transfer price paid to DKA or DKC, and cites *AK Steel Corporation* v. *United States*, 34 F. Supp. 2d, 756, 765 (Ct. Int'l Trade 1998) (''*AK Steel Corporation*''), where the Court upheld the Department's determination not to apply 19 U.S.C. 617b(f)(2)–(3) to transactions between collapsed entities.

DSM asserts that because DKA and DKC are not the manufacturers of the merchandise, the Department's calculations of their cost of production for the purposes of major input rule err by including costs and expenses incurred by these trading companies in unrelated lines of business. DSM also claims that, in fact, DKA and DKC simply provide a service to DSM which is limited to the resellers' minor commission or margin on the exchange and does not rise to the level required for an adjustment to be permitted under the major input rule. *See Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany*, 64 FR 30710, 30747 (Comment 29) (June 8, 1999) (''*Sheet and Strip from Germany*'').

Furthermore, DSM argues that no adjustment to the transfer prices reported by DSM is permitted under Section 773(f)(2) of the Act. DSM claims that if, however, the Department decides to disregard the transfer price in this situation, the price paid by DKA and DKC to its unaffiliated suppliers should be used by the Department as the amount that ''would have been if the transaction had occurred between persons who are not affiliated'' under the alternative valuation rule of Section 773(f)(2) of the Act. According to DSM, the Department should compare the price DSM paid to DKA or DKC (*i.e.*, transfer price) to a ''market value'' based on the actual price the affiliates paid to their unaffiliated slab suppliers for that particular slab, but not based on DSM's purchases of slabs from other suppliers. Finally, DSM argues that because the transfer price paid by DSM to its affiliates is greater than the price paid by the affiliates to their unaffiliated suppliers for those very slabs, there can be no basis for the Department to determine that the transfer price ''does not fairly reflect the amount usually reflected'' in sales of such slabs.

Petitioners contend that the Department should follow its decision in *SSRW from Canada* and revise DSM's submitted costs to properly value its slab inputs that were purchased through its affiliates to reflect the higher of transfer price, cost of production, or market value. They argue that, just as in *SSRW from Canada*, the possibility of shifting of costs exists in this case because, while the price at which the affiliated party purchased the input from an unaffiliated party may represent a ''market'' value of the input, the transfer price may or may not reflect all costs related to the input.

Petitioners contend that the Department should adjust it for the following items: (a) Indirect selling expenses of the affiliates should be included in their cost of production; (b) any offset for the interest income should be excluded from the affiliates' finance cost calculations since DSM improperly included long-term interest income in the offset amount; (c) interest expenses of DKA, which were included in DSM's consolidation, and were improperly excluded by the Department in its preliminary determination; and, (d) the highest of transfer price, cost of production, or market value, determined on quarterly basis.

Department's Position

We disagree with respondents, in part. Section 773(f)(2) of the Act allows for the Department to disregard transactions between affiliates if the transfer price does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. Because the affiliate is providing an input (slabs) into the production of subject merchandise, as well as services related to the acquisition of the slab input, the selling, general and administrative expenses (''SG&A'') of the affiliate must be included. We disagree with respondent that the trading company's overhead should not be added to its purchase price (*i.e.,* its cost of sales) in determining the value of the input. The trading company purchases the material, takes title to the item, and provides for the sale and transport of the good to the affiliated respondent. All of these activities have costs associated with them that must be taken into account in order to calculate a total actual cost.

Finally, we disagree with the respondent that in identifying a market value, the Department's preference should be to look to the prices that the affiliated suppliers paid to their unaffiliated suppliers, and not to the prices paid by the respondent to its unaffiliated suppliers from whom it directly purchased the major input. Both sets of transactions may constitute a usable market value. Respondent seems to suggest that because the affiliated supplier's supplier is providing the specific input, the price between them would be the preferable standard. We disagree. The price that a respondent pays directly to a supplier might be preferable since the statute, at section 773(f)(2), specifically refers to transactions ''in the market under consideration.'' The prices paid by the respondent in an investigation by definition represent the market under consideration. Therefore, we have valued the inputs received from affiliates at the higher of the affiliate's average acquisition cost plus SG&A, average market price, or transfer price.

Comment 13: Production Quantities During ''Test'' Period

Petitioners claim that while DSM did not include any production costs incurred in the ''test'' period, it did include the related production quantities. Petitioners argue that the Department should revise DSM's manufacturing costs to exclude these quantities from per-unit cost calculations.

DSM notes that it did include in the reported costs the material cost associated with the ''test'' period, as well as the related quantities. Only fabrication costs associated with this production were ultimately capitalized and added to Plate Mill #2 fixed assets. While DSM agrees that petitioners' argument has certain merit, it argues that the production quantities during the test period are so small as to have virtually no effect on the per-unit costs. DSM claims that it ignored the impact of these test period quantities and material costs simply as a matter of convenience and, also, to facilitate verification of total production quantity and total costs by remaining consistent with DSM's internal accounting treatment.

Department's Position

We agree with DSM that although the production quantities during the test period were small, as noted in our *Cost Verification Report* at 14, there is an inconsistency in DSM's treatment of the ''test'' period quantities and costs: all the quantities are included in the reported production quantity, only a portion of the related costs was included. Moreover, for accurate per-unit cost calculations, any exclusion of the production quantities should be accompanied by the exclusion of the related costs, which would result in an adjustment that has virtually no effect on the per-unit costs. Section 351.413 of the Regulations addresses the Department's authority to disregard insignificant adjustments under section 777A(a)(2) of the Act. ''[A]n ''insignificant adjustment'' is any individual adjustment having an ad valorem effect of less than 0.33 percent, or any group of adjustments having an ad valorem effect of less than 1.0 percent of the export price, constructed export price or normal value, as the case may be.'' *See* 19 C.F.R. 351.413 (1997). In the instant case, the effect of the individual adjustment on an ad valorem basis is less than 0.33 percent of normal value (i.e., Constructed Value). See DSM Cost Verification Report; see also Final Cost of Production Analysis Memo, dated December 13, 1999.

Comment 14: Gain from Disposal of Certain Fixed Assets

DSM argues that the Department should not adjust its reported G&A expenses to eliminate gains from the disposal of fixed assets that included certain non-depreciable assets. According to DSM, it is the Department's long-standing policy that gains and losses on the disposal of fixed assets, including the sale of an entire manufacturing facility, should be included in COP and CV as part of G&A expenses, provided that these assets had been used to produce subject merchandise. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews,* 64 FR 35,590, 35,614 (July 1, 1999) (''*Antifriction Bearings—1999*''); *Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Ecuador,* 60 FR 7019, 7042 (February 6, 1995) (''*Roses from Ecuador*'').

Petitioners contend that the Department should continue to disallow DSM's offset to G&A expenses generated by the sale of the above mentioned fixed assets. They point out that DSM reported negative G&A expenses, based largely on the large gain the company received on the sale of certain non-depreciable fixed assets. *See Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review,* 57 FR 3167 (January 28, 1992) (comment 57) (''*Forklift Trucks from Japan*''). Petitioners, argue, as evidenced by the above-mentioned cases, that the Department has never allowed this type of negative SG& A reported in its calculation of COP.

Petitioners assert that, according to *Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipe From the Republic of Korea,* 57 FR 53693, 53704 (November 12, 1992) (''*Stainless Steel Pipe from Korea*''), the Department's practice on treatment of dispositions of fixed assets is that in order to be included in the reported costs, these dispositions should be a normal part of the company's operations and a routine disposition of fixed assets. Petitioners argue that in the current case, the sale of assets in question is outside of DSM's ordinary course of business and is not a ''routine disposition'' of fixed assets, and the resulting gain is not income from activities related to the company's general operations. Petitioners argue that the cases cited by DSM (*Antifriction Bearings—1999, Roses from Ecuador,* et al.) are easily distinguished from the present case because in those cases the Department found that the assets were used to manufacture the subject merchandise and their sale were a normal part of operations, or did not address whether the transaction at issue was routine.

Department's Position

We disagree with DSM that the Department should include, as an offset to G&A expense, the gain incurred on the sale of certain non-depreciable fixed assets. We also disagree that this asset's relationship to production is the standard for whether to include the gain in G&A expense. *U.S. Steel Group* v. *United States,* 998 F.Supp. 1151 (CIT 1998). G&A expenses are those expenses which relate to the general operations of the company as a whole, rather than to the production process. Therefore, it is not relevant whether or not the particular asset was used to produce subject merchandise.

In analyzing whether to include an item in G&A, the Department considers the nature of the activity and whether the activity is significant enough to be treated separately from the respondent's other business activities. ''[I]n determining whether it is appropriate to include or exclude a particular item from the G&A calculation, the Department reviews the nature of the G&A activity and the relationship between this activity and the general operations of the company.'' *See Notice of Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above (''DRAMs'') From*

Taiwan, 64 FR 56308, 56323 (October 19, 1999). In cases where the activity is comparatively small in relation to the company's primary activities, the Department has included the occasional miscellaneous gain or loss in G&A expense. However, at the point where an activity becomes significant enough to constitute a separate business activity, the Department treats it as such. "However, the gain SMP is claiming as an offset to G&A expenses is related to the sale of a *significant* manufacturing plant and adjacent land area. This sales transaction is not a routine disposition of fixed assets' (emphasis added). *Stainless Steel Pipe from Korea,* 57 FR 53693, 53704 (November 12, 1992). *See, also, Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil,* 64 FR 38756, 38791 (July 19, 1999). In past cases, the portion of the sale of facilities related to certain non-depreciable fixed assets has not been specifically addressed, indicating that the particular treatment of those assets must not have been significant to the overall gain or loss. *See, e.g., Roses from Ecuador,* 60 FR 7019, 7042 (February 6, 1995). In the instant case, the gain on the sale of these non-depreciable assets constitutes the bulk of the gain from the sale of the facility and, as noted above, is greater than DSM's entire G&A expense.

A gain or loss on the sale of a non-depreciable asset, particularly one as significant as that incurred by DSM, warrants separate treatment. This is due to the fact that no depreciation expense associated with this asset were accounted for in the calculation of the cost of production. This is especially true in light of the fact that non-depreciable assets, which are not consumed in the production process and generally retain their value regardless of the state of a particular industry, are normally not treated as a depreciable asset. Depreciation expense is generally not calculated on these assets, which means that no costs associated with these expenses are included in COP or CV. Therefore, it would not be reasonable to include the associated gain or loss on disposal of this kind of assets when they are sold. As a result, we have continued to exclude the gain for the final determination.

POSCO

Comment 1: Whether POSCO's home market and U.S. sales were made at a different LOT than sales by POSCO's affiliated service centers.

POSCO asserts that, based on the information on the record, the Department should conclude that POSCO's home market sales are at a different LOT than the service centers' sales because each sells to purchasers at different stages in the chain of distribution and each performs qualitatively and quantitatively different selling functions. POSCO argues that the differences in the LOT between POSCO and the service centers is demonstrated by significant differences in their marketing positions, quantity sold, customer base, selling activities, warranty services, and sales expenses.

POSCO states that it is an integrated manufacturer which produces a wide range of steel products, sells subject merchandise on a large scale, and has adapted its expense structure in order to maximize profit by selling on a large scale. On the other hand, according to POSCO, the service centers are small resellers which sell out of inventory on a much smaller scale.

In addition, POSCO asserts that it sold significantly more subject merchandise than the service centers during the POI. According to POSCO, its customers are large end-users, resellers or wholesalers, and service centers that buy in large quantities and process the products. The service centers' customers, on the other hand, are typically small resellers and end-users who cannot hold inventory or shear products, and therefore, tend to order small quantities. POSCO argues that these differences in customer base and customer purchasing power are significant indications that POSCO sells merchandise at a different point in the distribution chain than the service centers and, thus, at a different LOT.

POSCO states that the regulations, at 19 CFR 351.412(c)(2), require the Department to look for differences in selling activities when conducting a LOT analysis, and that the differences in the LOT between POSCO and service centers is demonstrated by significant differences in their selling functions. POSCO states that the service centers maintain inventory for sales of subject merchandise, while POSCO sells subject merchandise to order. Another difference, according to POSCO, is that it usually produces subject merchandise in standard lot sizes because its customers later process the merchandise, while the service centers typically process the merchandise into different sizes for small customers who are unable to perform this function. POSCO also states that it provides more delivery options and more differentiated freight arrangements than the service centers. POSCO argues that, while the company and the service centers do provide some similar delivery terms, the mere fact that certain selling activities are performed in a similar manner does not preclude a finding of different LOTs.

POSCO argues that the Department has also emphasized differences in warranty services, technical services and other sales-related activities when examining LOTs, and cite *Carbon Steel Products from Germany,* 64 F.R. at 16,703, 16,705 (April 6, 1999); *Steel Wire Rod from Canada,* 63 F.R. at 9191–9193 (April 1, 1999); *Stainless Steel Sheet and Strip in Coils from Mexico,* 64 F.R. 30790, 30807–30810 (June 8, 1999). POSCO argues that while it provides warranty services for base metal and provides technical services to its customers, the service centers do not.

POSCO next argues that the differences in the LOT between POSCO and the service centers is demonstrated by differences in their sales expenses. POSCO argues that its selling expense structure is very different from that of the service centers, in that it spends significantly more on sales expenses. POSCO further argues that the service centers assume the risk of finding a customer for the products they purchase from POSCO, while POSCO has a commitment from its customer before production. Respondent states that the Department noted no discrepancies in the data POSCO presented in support of POSCO's arguments regarding the different LOTs, and that the Department's findings at verification confirm its analysis.

Petitioners argue that there is no significant difference between the levels of selling activity performed by POSCO and its affiliated service centers because, while the service centers may inventory products longer than POSCO, POSCO provides such selling functions as warranty, technical advice and market research for all customers.

Petitioners claim that, contrary to POSCO's assertion, no significant difference exists between sales quantities and customer categories sold upstream and those downstream. Petitioners further argue that, in any case, differences in sales quantities and customer categories are irrelevant for purposes of determining separate LOTs. According to petitioners, without evidence that significant differences in selling functions exist between sales channels, there is no basis for the Department to determine that different LOTs exist.

Department's Position

We agree with petitioners. In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A and profit. For CEP sales, the Department makes its analysis at the level of the constructed export sale from the exporter to the affiliated importer. *See* sections 773 (a)(7)(A) and 772 (b) of the Act.

Because of the statutory mandate to take LOT differences into consideration, the Department is required to conduct a LOT analysis in every case, regardless of whether a respondent has requested a LOT adjustment or a CEP offset for a given group of sales. To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the LOTs between the NV and the CEP sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR at 61731.

In the *Preliminary Determination,* the Department found that there were no differences in LOT between POSCO's and the service centers' home market sales and, therefore, did not make any LOT adjustment to the normal value. *See LOT Memo,* dated July 19, 1999; *Preliminary Determination,* 64 FR at 41226–27. In order to determine whether NV was established at a different LOT than EP sales, we examined stages in the marketing process and selling functions along the chains of distribution between POSCO and its home market and U.S. customers. Based on our analysis of the chains of distribution and selling functions performed for EP sales in the U.S. market, we continue to determine that POSCO and its subsidiaries POSCO Steel Sales and Service Co., Ltd. (''POSTEEL''), the service centers, and POSAM (for EP sales) provided a sufficiently similar degree of services on sales to all channels of distribution, and that the sales made to the United States constitute one LOT. *See LOT Memo,* dated July 19, 1999; *Preliminary Determination.*

We find that the facts in this case are similar to those in *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea,* 64 Fed. Reg. 48767, 48773 (Sept. 8, 1999). While different types of selling activities were performed by POSCO, POSTEEL, and the service centers, in examining the selling functions associated with various LOTs, the Department will compare the *cumulative* level of selling activity rather than simply collating specific activities. *See LOT Memo,* dated July 19, 1999; *see generally, Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR at 61731. In comparing the cumulative level of selling activity, we find that the differences in selling functions between POSCO's two claimed home market LOTs are not substantial. Accordingly, we find the U.S. sales and home market sales to be at the same LOT, such that no LOT adjustment under section 773(a)(7)(A) of the Act is warranted.

Comment 2: Whether the Department should reclassify POSCO's U.S. sales as CEP transactions

Petitioners contend that the Department should reclassify POSCO's U.S. sales as CEP transactions, and assert that record evidence demonstrates that POSAM sets prices in the United States and performs a number of significant selling functions.

According to petitioners, POSAM was solely responsible for selling POSCO's product and keeping contact with POSCO's customers. Petitioners argue that U.S. customers initially contact POSAM, and POSCO has admitted that during the POI it did not send any sales personnel or senior managers to the United States. Petitioners also state that POSCO reported that POSAM employs numerous individuals in the United States responsible for various activities that are consistent with an active selling operation in the United States, not an operation whose only purpose is to process sales-related documentation. In addition, petitioners state that POSAM's financial statements indicate that POSAM extended credit for its customers' purchases of subject merchandise from POSCO and POSTEEL. Thus, according to petitioners, POSAM is undertaking the entire risk of these sales and, as such, is far more than a mere processor of sales-related documentation.

POSCO argues that its sales through POSAM are properly treated as EP sales. Respondent states that the Department closely examined this issue at verification and found that POSAM merely functions as a forwarder of requests to POSCO, and that only POSCO can approve the price and terms of sale.

POSCO maintains that the Department found at verification that all prices and terms of sale for U.S. sales are determined by POSCO or POSTEEL and not POSAM, and that POSAM's role was limited to that of a processor of sales-related documentation and providing a communication link. *See Sales Verification Report,* dated November 10, 1999. POSCO asserts that in no instance did POSAM have discretion to adjust prices or negotiate with the customer. Furthermore, according to POSCO, POSAM merely served as a communication link between POSCO and its U.S. unaffiliated customers due to the time difference and communication costs.

POSCO also argues that POSAM employs few employees and that it would not be feasible for such a small number of employees to conduct and operate an ''active selling operation.'' Next, POSCO states that POSAM did not extend credit to POSCO's customers but merely received payment which it then transferred to POSCO. Finally, POSCO argues that the circumstances in the instant investigation are distinguishable from other proceedings before the Department. In prior cases such as *Stainless Steel Wire Rod, Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products, and Stainless Steel Plate in Coils from the Republic of Korea,* the circumstances were different and the factual basis for the Department's decisions also differed. In each of the above-mentioned cases, there was tangible evidence that POSAM did not change or reject prices; POSAM is not the importer of record for the overwhelming majority of sales; and POSAM did not provide any financing to the U.S. customers. Based on these factors, POSCO argues that there is nothing on the record to indicate that POSAM took steps beyond those necessitated for EP classification. Accordingly, POSCO requests that the Department continue to accord EP treatment to POSCO's U.S. sales through POSAM.

Department's Position

We agree with POSCO that sales through POSAM are more appropriately treated as EP transactions. The facts in this investigation are similar to the facts in the *Final Determination of Stainless Steel Wire Rod from the Republic of Korea* 63 FR 40461 (July 29, 1998) cited by POSCO, and sufficient record evidence exists which leads the

Department to conclude that POSCO's U.S. sales through POSAM warrant classification as EP sales.

The Department treats sales through an agent in the United States as CEP sales, unless the activities of the agent are merely ancillary to the sales process. Specifically, where sales are made prior to importation through a U.S.-based affiliate to an unaffiliated customer in the United States, the Department examines several factors to determine whether these sales warrant classification as EP sales. These factors are: (1) Whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer without being introduced into the physical inventory of the affiliated selling agent; (2) whether this is the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling agent is limited to that of a ''processor of sales-related documentation'' and a ''communication link'' with the unrelated U.S. buyer. Where the factors indicate that the activities of the U.S. selling agent are ancillary to the sale (*e.g.,* arranging transportation or customs clearance), we treat the transactions as EP sales. Where the U.S. selling agent is substantially involved in the sales process (*e.g.,* negotiating prices), we treat the transactions as CEP sales. *See Certain Cut-to-Length Carbon Steel Plate from Germany: Final Results of Antidumping Administrative Review,* 62 FR 18389, 18391 (April 15, 1997); *see also Mitsubishi Heavy Industries* v. *United States,* 15 F. Supp.2d 807, 811–12 (CIT 1998).

We note that neither party has disputed that POSCO's U.S. sales through POSAM meet the first two criteria of the Department's standard. Therefore, the determining factor in this case is the degree of involvement by POSAM in the sales process. In the *Preliminary Determination,* the Department based its EP classification of sales through POSAM on POSCO's statement that POSTEEL or POSCO determined price and terms of sale. *See* 64 FR at 41227–28. Based upon our findings at verification, it is clear that POSTEEL and/or POSCO perform almost all selling activities for U.S. sales through POSAM, including undertaking business trips to meet with potential U.S. customers of the subject merchandise. *See Sales Verification Report* at 11. The record further supports POSCO's assertion that POSAM is merely a processor of sales-related documentation. First, POSAM is only a point of contact via whom the U.S. unaffiliated customer ultimately contacts POSCO or POSTEEL. POSAM officials explained that because of the time zone difference and the cost of long distance, it would be expensive and inconvenient for the customer to contact POSTEEL directly. *See Sales Verification Report,* dated November 10, 1999. POSAM acts as merely a conduit between the unaffiliated U.S. customer and POSTEEL. *See Sales Verification Report,* dated November 10, 1999. POSAM merely collects payment from the customer and transfers this money to POSTEEL or POSCO. *See Sales Verification Report,* dated November 10, 1999. The functions performed by POSAM indicate that it is a mere facilitator and not a seller of subject merchandise. This selling arrangement between POSAM and POSTEEL is similar to the one between POSAM and Changwon, addressed in *Stainless Steel Wire Rod,* where the U.S. customers remit payment to POSAM, which subsequently transfers the payment to POSTEEL, which, in turn, transfers it to Changwon. *See Stainless Steel Wire Rod From Canada,* 64 FR at 40419. Furthermore, of the sales examined by the Department during the POSAM verification, we found no evidence that POSAM was given discretion in adjusting the price of the sale. *See Sales Verification Report* at 30. Thus, the record evidence demonstrates that POSAM has no sales negotiating authority with regard to U.S. sales. Therefore, because of the lack of significant risk incurred by POSAM, in addition to its lack of other selling activities, we find that POSAM's activities are merely ancillary to the sales process and have classified POSCO's U.S. sales through POSAM as EP transactions.

Comment 3: Whether the Department should disregard POSCO's model-matching methodology

Petitioners state that due to significant discrepancies between the model-matching reporting methodologies submitted by POSCO, the Department should disregard POSCO's model-matching methodology. Petitioners argue that for a U.S. specification, POSCO and Dongkuk assigned different home market specifications in the most similar model match chart. According to petitioners, this indicates that POSCO's and Dongkuk's specification concordances for similar products are unreliable. Petitioners argue that the Department should assign, as facts available, the highest reported home market price to all sales of non-identical home market specifications matching to U.S. sales.

POSCO claims that its model match methodology was verified and is reliable. POSCO states that petitioners propose that the Department assign the highest reported home market price to all sales of non-identical specifications matching to U.S. sales because POSCO did not report the same model matching hierarchy in the questionnaire responses. POSCO claims that it is not aware of any requirement that respondents report identical matching hierarchies. POSCO asserts that the Department verified POSCO's approach to model matching and the underlying information at verification. POSCO further argues that the issue of model match hierarchy is moot due to the fact that, for the specification at issue, the Department did not have to match to a similar product for POSCO. POSCO claims that both companies sold a sufficient quantity of the product above cost in the home market to eliminate the necessity of selecting the next most similar product.

Department's Position

We disagree with petitioners that POSCO's reported model matching hierarchies are flawed and must be rejected. The questionnaire in this case instructed respondents to identify, for every specification sold to the United States, the identical and four or five most similar specifications sold in the home market. In the questionnaire, respondents are requested to explain their identical and similar selections. The Department normally relies on this information in developing its model match concordance. *See Original Questionnaire Response: Section B, C and Appendix V* (March 17, 1999). However, if we disagree with any selection of similarity, or if any petitioners raise any issues, we can and do rearrange this hierarchy in any way we deem appropriate. Prior to raising this issue in their case brief, petitioners did not dispute any of the hierarchies proposed by respondents.

The Department verified the methodologies chosen by each of the responding companies, and we noted no discrepancies between the companies' records in the normal course of business and the characteristics reported to us. We also note that each company sells a different mix of specifications in the home market. Thus, the similarity hierarchies can vary based on this fact. Therefore, we find that the methodology used by POSCO to report physical characteristics and matching hierarchies is accurate and reasonable under the circumstances. In addition, in this case, the great majority of all of the U.S. sales were matched to either identical, or functionally identical, home market specifications. As a result, we have not questioned the use of these hierarchies in supplemental questionnaires or found specific faults with any of POSCO's selections. Thus, the second and third choice for similar specifications are not relevant to the margin calculations because these categories were not used in matching.

Comment 4: *Whether the Department should apply adverse facts available for POSCO's reported downstream sales in the home market.*

Petitioners claim that POSCO's reported sales and cost information for affiliated service centers is significantly flawed and, as a result, the Department should apply adverse facts available for POSCO's reported downstream sales in the home market. Petitioners argue that POSCO did not distinguish between prime and non-prime merchandise sold by its affiliated service centers despite the Department's explicit requests for that information. Petitioners state that the Department discovered that POSCO's reporting of the PRIMEH Fields for sales made by one service center was based entirely on the nature of the merchandise purchased from POSCO, rather than on the nature of the merchandise sold by the service center. Petitioners argue that while the merchandise purchased from POSCO by one service center was reported as prime material, that does not confirm the fact POSCO sold only prime merchandise. Petitioners claim that the merchandise could have been damaged during shipment or failed to meet customer-specified characteristics that would warrant the production of non-prime merchandise.

Petitioners further claim that POSCO failed to report affiliated service centers' further processing costs for products produced by POSCO. Petitioners argue that POSCO reported variable costs for the affiliated service centers based solely on POSCO's own costs, as opposed to the combined manufacturing costs of POSCO and its affiliated service centers. Petitioners state that POSCO only provided cost information for the unique products produced by the affiliated service centers and did not provide the information requested by the Department for the common products produced by both POSCO and the affiliated service centers. Petitioners claim that POSCO withheld critically important information and did not fully cooperate with the Department's repeated requests and therefore, the Department should apply adverse facts available.

POSCO argues that the Department verified the accuracy of its reported downstream sales information. POSCO claims that the service center's product code defines the merchandise that it is selling, not the merchandise that it purchased. POSCO argues that the second and third digits identify whether the merchandise was imported or purchased domestically and the fourth and fifth digits of the code identifies the specification of the merchandise being sold. Therefore, POSCO claims that the service center is able to demonstrate that its sales of second grade material were not from POSCO. POSCO states that it provided complete and accurate answers to the Department's questions on reporting the conditions of the merchandise.

POSCO states that it fully explained the basis for its methodology, and the Department verified the accuracy of the reporting methodology. POSCO claims that the Department verified that the additional cost has a de minimis impact and is therefore, unnecessary for the service centers to be included in the analysis.

Department's Position

We agree with POSCO. At verification, the Department conducted a detailed examination of the reported downstream sales to determine the accuracy of the reported characteristics and the methodology for reporting any additional processing costs and expenses. *See Sales Verification Report*, dated November 10, 1999, at 2. Therefore, we have used the reported downstream sales in our analysis.

We agree with petitioners, in part, that POSCO failed to report the reseller's further processing costs on the COP computer tape. At verification, POSCO indicated that it did not include such costs in the reported COPs because they would be negligible when included and weight-averaged with POSCO's costs. *See Cost Verification Report,* dated November 4, 1999, at 7. We tested this at verification and found that POSCO's failure to include the resellers' further manufacturing costs resulted in a minor understatement of COP. *See Cost Verification Report*. We have increased the reported COP, based on our findings at verification, to account for this understatement.

The Department normally requests responding companies to identify whether sales are of prime or secondary merchandise in both the home and U.S. markets to ensure that a proper comparison is made between sales in both markets. *See Original Questionnaire Response: Section B and C* (March 17, 1999). However, the Department will also consider the burden on the responding company, whether the information is retained in the normal course of business, and whether the requested information is retrievable without undue burden. In the instant case, the Department examined the records of the affiliated resellers which we visited. We verified that one reseller does not maintain a product code designation for non-prime or off-grade merchandise, thus rendering it impossible for that reseller to identify possible sales of non-prime merchandise. *See Sales Verification Report,* dated November 10, 1999 at 22. For the other reseller with which we conducted verification, we noted no discrepancies in reviewing documentation to confirm its assertion that it had no sales of non-prime merchandise purchased from POSCO during the POI. *See Sales Verification Report,* dated November 10, 1999, at 25.

Based upon our examination of POSCO's records and its affiliated resellers' records, the Department finds that POSCO's information was properly reported to the Department as requested. Therefore, we have continued to use all of POSCO's downstream sales in our analysis.

Comment 5: *Facts Available for Certain Unique Product Costs*

Petitioners argue that the Department should resort to adverse facts available in adjusting POSCO's reported costs for certain products. Petitioners claim that POSCO did not identify the unique costs associated with producing products to various specified widths. Petitioners state that POSCO indicated that it did not identify unique costs for the width characteristic for cut-to-length plate although it tracked the unique costs for hot-rolled plate and hot-rolled sheet products. Petitioners claim that the Department confirmed that for subject merchandise produced at the plate mill, POSCO's reported costs did not reflect the differences in width. Petitioners argue that width is an important physical characteristic in the Department's model match hierarchy and that POSCO failed to cooperate to the best of its ability to provide information requested by the Department.

POSCO claims that, as verified by the Department, the costs associated with width are minor. POSCO states that width was not taken into account in the product definition for plate products. POSCO argues that the Department confirmed that any attempt to superimpose width as a cost allocator raises serious risk that other costs would be distorted in the process.

Department's Position: We agree with POSCO that the cost differences associated with width are minor and that any attempt to adjust for these differences could be distortive. As detailed in the cost verification report, we determined the minor cost differences associated with width (one of several relevant physical characteristics) and found a way to isolate, measure, and adjust for them. *See Costs Verification Report*, dated November 4, 1999, at 5. However, POSCO's reported costs differ for reasons unrelated solely to physical characteristics—POSCO's costs for different products vary based on which plate mill will produce the product as well as which blast furnace, steel making unit, and concast unit will produce the slab. *See POSCO Cost Verification Report,* dated November 10, 1999. Because each of these has different efficiencies and standard costs, the same product (not to mention products whose only difference is thickness) will have a different cost based on which mill in which it was produced. As a consequence, cost differences are not purely isolated to physical characteristics. Thus, applying an adjustment factor based solely on physical characteristics to the reported costs, which vary for reasons not associated with physical characteristics, may not increase the accuracy of the reported costs. We note that POSCO reported the actual costs it incurred to produce the subject merchandise. For COP purposes, these costs are accurate and reliable. However, for purposes of adjustments for physical differences in merchandise, these costs are somewhat problematic in that POSCO cannot always isolate cost differences purely associated with physical differences (*e.g.,* when identical products are produced at separate facilities, production efficiencies become a factor in the calculation of the cost of the product). In this case, the vast majority of price-to-price comparisons are of identical merchandise. Therefore, any adjustment would have a negligible effect.

Comment 6: *Variable and Total Cost of Manufacture*

Petitioners argue that POSCO misstates the burden of producing complete and accurate data. They argue that the data provided to the Department and petitioners was not readable due to the existence of multiple VCOM values within a single CONNUM. Petitioners state that POSCO's revised table of ''cost by CONNUMU,'' attached to the July 16, 1999 letter, is not an acceptable explanation of the previous inadequate submission. In all cases, most of the sales represented by the CONNUMU had been assigned one VCOM value, while other VCOM was assigned to a much smaller number of sales. In POSCO's revised table, the VCOM value which had previously been assigned to the smaller number of sales for each CONNUMU is now identified as being the actual VCOM value for all sales. Accordingly, petitioners feel that this is not a logical explanation of POSCO's previous submission. In light of these deficiencies in the database, petitioners recommend the Department apply, as partial facts available, the highest calculated margin for any CONNUM to each of these sales implicated by the deficiencies.

POSCO claims that its reported variable and total cost information on the U.S. sales database is correct. POSCO asserts that an inadvertent error in creating files caused different values in variable costs for the same products in a previous submission. POSCO states that the error has been corrected and subsequent databases have reported a single variable cost and a single total cost of each unique CONNUM. POSCO claims that the costs were fully and successfully verified by the Department.

Department's Position

We agree with POSCO. Upon review of the record, we found that the errors noted by petitioner made when POSCO filed its July 12, 1999, response appear to be inadvertent. Subsequently, at the request of the Department, POSCO corrected this error in its post-verification filing on October 27, 1999. The Department has utilized the database filed on October 27, 1999, with the unique variable cost of manufacturing and total cost of manufacturing in its final determination.

Comment 7: Home Market Viability

Respondent claims that the issue regarding home market viability raised by petitioners should be rejected by the Department. Respondent argues that since petitioners did not raise that issue in their case briefs, they have waived the right for consideration of the issue by the Department.

Department's Position

The Department has not considered or substantially addressed this issue in the instant final determination because petitioners allegations were untimely. For a full discussion, *see Particular Market Situation,* section, above.

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 subject merchandise from Korea that were entered, or withdrawn from warehouse, for consumption on or after July 19, 1999 (the date of publication of the Department's preliminary determination) for DSM, and those companies which received the ''all others'' rate. POSCO's rate continues to be de minimis, as it was in the *Preliminary Determination;* therefore the Department will not suspend liquidation of these entries. 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
Pohang Iron & Steel Co., Ltd..	0.05 de minimis
Dongkuk Steel Mill Co., Ltd..	2.98
All Others	2.98

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our determination. Because our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the 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 issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33234 Filed 12–28–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–847]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Japan

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

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Manning or Nithya Nagarajan, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3936 or (202) 482–5253, respectively.

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''). In addition, unless otherwise indicated, all references made are to the Department's regulations codified at 19 CFR Part 351 (1998).

Final Determination

We determine that certain cut-to-length carbon-quality steel plate products (''CTL plate'') from Japan are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 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

Since the publication of the preliminary determination in this investigation (*Notice of Preliminary Determination of Antidumping Investigation: Certain Cut-To-Length Carbon-Quality Steel Plate from Japan,* 64 FR 41218 (July 29, 1999) (''*Preliminary Determination*''), the following events have occurred:

In September 1999, the Department of Commerce (''the Department'') conducted verification of Kawasaki Steel Corporation (''KSC''), the sole participating respondent in the instant investigation. On October 21, 1999, we issued our cost verification report for KSC, and on October 26, 1999, we issued our sales verification report. Public versions of our report of the results of the cost and sales verifications are on file in the Central Records Unit (''CRU'') located in room B–099 of the main Department of Commerce building, under the appropriate case number. Petitioners[1] and respondent submitted case briefs on November 5, 1999, and rebuttal briefs on November 10, 1999. On November 12, 1999, the Department held a public hearing concerning this investigation.

Facts Available

1. Application of Facts Available

Section 776(a)(2) of the Act provides that ''if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency.

Pursuant to section 782(e) of the Act, notwithstanding the Department's determination that the submitted information is ''deficient'' under section 782(d) of the Act, the Department shall not decline to consider such information if all of the following requirements are satisfied: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

2. Selection of Facts Available

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review,* 62 FR 53808, 53819–20 (October 16, 1997).

Kobe Steel, Ltd. (''Kobe''), Nippon Steel Corporation (''Nippon''), NKK Corporation (''NKK''), and Sumitomo Metal Industries, Ltd. (''Sumitomo'') all declined to respond to the Department's antidumping questionnaire. Because these respondents have withheld requested information, we determine that it is appropriate to use facts available, in accordance with section 776(a)(2)(A) and (C) of the Act. We have also determined that because these respondents failed to respond to our questionnaire, they have not cooperated to the best of their abilities. Therefore, pursuant to section 776(b) of the Act, we used an adverse inference in selecting a margin from the facts available. As facts available, the Department has applied a margin rate of 59.12 percent, the highest alleged margin in the petition.

3. Corroboration of Information Used as Facts Available

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on ''secondary information,'' such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316 (1994) (hereinafter, the ''SAA'') states that ''corroborate'' means to determine that the information used has probative value. See SAA at 870.

In this proceeding, we considered the petition information the most appropriate record information to use to establish the dumping margins for these uncooperative respondents. In accordance with section 776(c) of the Act, we sought to corroborate the data contained in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*e.g.*, import statistics and foreign market research reports). *See* Initiation of *Antidumping Duty Investigations: Certain Cut-To-*

[1] The petitioners are Bethlehem Steel Corporation, Gulf States Steel, Inc., IPSCO Steel Inc., Tuscaloosa Steel Corporation, the United Steelworkers of America, and the U.S. Steel Group (a unit of USX Corporation).

Length Carbon-Quality Steel Plate From the Czech Republic, France, India, Indonesia, Italy, Japan, the Republic of Korea, and the Former Yugoslav Republic of Macedonia, 64 FR 12959 (March 16, 1999) (''*Initiation Notice*'').

Moreover, for purposes of the preliminary determination, we corroborated the information in the petition. In this regard, we reexamined the export price and CV data which formed the basis for the highest margin in the petition in light of information obtained during the investigation and, to the extent practicable, found that it has probative value (*see* the July 19, 1999, memorandum to the file regarding *Corroboration of the Petition Data,* on file in the CRU). Since the preliminary determination, we received no new information which would call into question the use of petition information as facts available or our corroboration analysis.

Scope of Investigation

The products covered by the scope of this investigation are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is January 1, 1998, through December 31, 1998.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by KSC covered by the description in the ''*Scope of Investigation*'' section, above, and sold in Japan during the POI to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. 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. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance (which are identified in Appendix V of the questionnaire): painting, quality, grade specification, heat treatment, nominal thickness, nominal width, patterns in relief, and descaling. In accordance with section 771(16)(B) of the Act, these physical characteristics reflect differences in the uses and value of the subject merchandise.

Because KSC had no sales of non-prime merchandise in the United States during the POI, we did not use home market sales of non-prime merchandise in our product comparisons (*see, e.g., Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Sweden*, 63 FR 40449, 40450 (July 29, 1998) (''*SSWR*'').

Verification

As provided in section 782(i) of the Act, we verified all information determined to be acceptable for use in making our final determination, in accordance with standard verification procedures.

Changes From the Department's Preliminary Determination

Based on our analysis of the comments received, we have made certain changes for the final determination. Where applicable, these changes are discussed in the relevant sections of the party comments below. Specifically, we revised the following cost items to reflect certain adjustments arising from information obtained during verification: (1) KSC's interest expense ratio, and (2) KSC's G&A expense ratio. *See* Memorandum to the File, ''Verification of the Cost Responses of Kawasaki Steel Corporation, in the Antidumping Duty Investigation of Certain Cut-To-Length Carbon-Quality Steel Products from Japan,'' dated October 21, 1999 (''Cost Verification Report''). In addition, we have made the following changes to items concerning

KSC's home market and U.S. sales: (1) revised KSC's constructed export price calculation to include the operating expenses of its U.S. affiliate, Kawasaki Steel (America) Inc. (''KSCUSA''), (2) changed the application of the arm's-length test of KSC's home market sales from a point-of-delivery basis to a customer-specific basis, (3) granted KSC the CEP offset, (4) used the yen price as the starting price for KSC's export price transactions, (5) included three unreported U.S. sales disclosed at verification in our margin calculations, (6) recalculated Kawasho's home market credit expense to account for inconsistencies found during verification regarding Kawasho's reported dates of payment, (7) adjusted Kawasho International (USA)'s (''KI's'') short-term interest rate to account for additional interest expenses found during verification, (8) corrected a clerical error in the programming for the preliminary determination that understated Kawasho's home market short-term interest rate, (9) corrected Kawasho's warehousing expenses to account for a clerical error disclosed during verification, and (10) corrected the gross unit price on two U.S. sales by KI to account for a clerical error disclosed at verification. For further details concerning the changes listed above, *see* Memorandum to the File, ''Calculation Memorandum of the Final Determination for the Investigation of Kawasaki Steel Corporation,'' dated December 13, 1999 (''Final Determination Calculation Memo'').

Throughout the investigation, KSC argued that its U.S. affiliate, KSCUSA, is a liaison office that provides certain after-sales services to the customers of KSC's customers. According to KSC, KSCUSA provides legal, financial, and accounting support to KSC's other U.S. subsidiary companies; assists KSC with public relations in the Americas; coordinates and receives U.S. business visits from KSC officials; informs KSC of political, economic, social, and business conditions in the United States; and provides warranty/complaint and technical services to U.S. end-users of KSC steel products, including subject merchandise. *See* KSC's June 23, 1999, supplemental Section A response at A–9 and KSC's July 22, 1999, second supplemental Section A response at 10–15.

KSC states that KSCUSA is not involved in the sale of subject merchandise, but supports sales of KSC's entire line of steel products in North, South, and Central America. With respect to CTL plate sales, KSC states that KSCUSA's role in providing after-sale services involves providing technical services, handling warranty claims, and processing complaints by U.S. end-users. However, KSC states that there were no such warranty claims/complaints on subject CTL plate sales during the POI. *See* KSC's July 22, 1999, second supplemental Section A response at 10–15.

Although KSC argues that there were no warranty claims or complaints filed against CTL plate by U.S. end-users during the POI, this does not diminish the fact that KSCUSA was still operating and incurring costs (e.g., salaries, rent) to maintain the personnel and corporate infrastructure necessary to handle such complaints, in the event any are filed. For this reason, we find that KSCUSA's expenses should be included in the calculation of constructed export price (''CEP''). Since the costs incurred by KSCUSA are not specific to CTL plate, but rather apply to all of KSC's steel products, we consider these expenses to be indirect selling expenses. Because of the limited information on the record concerning KSCUSA's expenses, the most reasonable method for including these costs in KSC's CEP calculation is to calculate a ratio of KSCUSA's operating expenses over KSC's total sales in North, South, and Central America. In our calculations, we multiplied this ratio against KSC's gross unit price for CEP sales, and added the result to U.S. indirect selling expenses.

Interested Party Comments

Home Market and U.S. Sales

Comment 1: Date of Sale

Petitioners argue that section 351.401(i) of Department's regulations allows it to use ''a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'' Petitioners argue that the documents and information obtained at verification support the conclusion that the material terms of sale are set on the order confirmation date and therefore the order confirmation date is the appropriate date of sale for this investigation.

Petitioners observe that when KSC revises an order confirmation, its internal records do not identify the type of revision causing the revised order confirmation to be issued. Petitioners argue that although KSC provided evidence that some changes occurred between the order confirmation and invoice date for a portion of its sales, petitioners state that KSC is unable to identify whether these changes were material or not. Petitioners observe that the Department stated in its verification report that ''neither of these methods of analysis reflects the type of revision that occurred or, in the case where multiple revisions occurred for a single order confirmation, the total number of revisions for that order.'' *See* Memorandum to the File, ''Verification of the Sales Responses of Kawasaki Steel Corporation, and its Affiliated Companies, in the antidumping Duty Investigation of Certain Cut-To-Length Carbon-Quality Steel Products from Japan,'' dated October 26, 1999, (''Sales Verification Report''), at 29. Petitioners conclude that there is no record evidence of the number of sales in which there were material changes to the terms of sale after order confirmation. Furthermore, petitioners note that although a portion of KSC's sales incurred post-order changes, the majority of KSC's sales had no changes of any kind after order confirmation. Therefore, in the absence of record evidence indicating that the material terms of sale were modified after order confirmation date, the Department must use order confirmation date as the date of sale. Petitioners cite to *Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation*, 63 FR 9312, 9315 (February 25, 1999) (''*Russian Hot-Rolled*''), where the Department stated that ''there is no evidence on the record which indicates that, when no order amendment was provided, the terms of sale for the merchandise shipped differed from the terms of sale set in the order specification.'' Petitioners argue that in that case the Department preliminarily determined that it was appropriate to use the ''order specification date or order amendment, if applicable, as the date of sale.'' *Id.* Petitioners conclude that the *Russian Hot-Rolled* case illustrates that the Department will not adopt the invoice date as the date of sale when there is no record evidence to show modifications to the material terms of sale after the order date.

Petitioners also argue that KSC's refusal to report sales based on order confirmation warrants use of adverse facts available. Petitioners note that the Department requested KSC to report all sales on the basis order confirmation date rather than invoice date in its Supplemental Section B Questionnaire. In its response, KSC stated that it ''will not provide sales or cost information on an order confirmation date-basis.'' *See* KSC's June 23, 1990 Section B Supplemental Questionnaire Response, at 7. According to petitioners, this response indicates that KSC has failed to cooperate by not acting to the best of its ability to comply with a request for information. Consequently, petitioners recommend that the Department use as adverse facts available the highest margin alleged by petitioners or the highest margin calculated for a single CONNUM, whichever is higher.

Lastly, petitioners argue that even if the Department accepts the invoice date as the date of sale, KSC's refusal to provide sales and cost information on an order confirmation basis, as requested in the Department's supplemental questionnaire, constitutes uncooperative behavior. Petitioners note that section 776(a) of the Act states that when ''an interested party or any other person—(A) withholds information that has been requested by the [Department] * * * the [Department] shall * * * use the facts otherwise available in reaching the applicable determination under this subtitle.'' This provision of the statute, petitioners claim, authorizes the Department to use the highest margin alleged in the petition of this investigation, which, according to petitioners, would be an appropriate response to KSC's disregard for the Department's authority to request information.

Respondent argues that, in accordance with its rules and established practice, the Department appropriately used KSC's invoice date as the date of sale in the preliminary determination of this investigation. KSC claims that section 351.401(i) of the Department's regulations establishes a presumption that invoice date be used as the date of sale, a rule which KSC argues the Department has consistently applied in recent antidumping investigations. Specifically, respondent cites *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24329, 24334 (May 6, 1999) (''*Hot-Rolled Steel from Japan*''), and *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part*, 64 FR 2173, 2178 (January 13, 1999), as evidence that the Department reaffirmed its practice of using the invoice date as the proper date of sale when terms of sale can change between order and invoice date.

According to KSC, the initial terms of sale are established with the order confirmation. KSC states that the initial terms of sale can and do change up to the invoice/shipment date. KSC notes that it provided evidence that the terms of sale changed for a significant portion of sales during the POI. KSC observes that the Department verified the accuracy of this information and stated in its verification report that ''[t]hroughout the course of this verification, we encountered several revised order confirmations and revised invoices'' and that ''[w]e found no discrepancies between the documents we examined and the explanation of order confirmation and invoice revisions KSC provided in its questionnaire responses.'' *See* Sales Verification Report at 30.

KSC states that in two recent investigations on hot-rolled steel products from Japan and stainless steel sheet and strip products from Japan, and one administrative review covering corrosion-resistant steel from Japan, the Department requested, and KSC provided, two complete sales databases for both the home market and U.S. market. See Hot-Rolled Steel from Japan; Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan, 64 FR 30574, 30585 (June 8, 1999) (''Stainless Steel Sheet and Strip from Japan''); and *Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Preliminary Results of Antidumping Duty Administrative Review*, 64 FR 4483 (August 16, 1999). For each proceeding, KSC submitted one database compiled using order confirmation dates and another database using invoice dates. KSC notes that in all of these proceedings, the Department's purpose for requesting the information was to determine the appropriate date of sale. KSC argues that the Department verified the submitted information and determined that invoice date is the appropriate date of sale in the final determinations of each of these three proceedings.

Lastly, KSC argues that the invoice/shipment date is the correct date of sale because KSC and its affiliates participating in this investigation use invoice date as the date of sale in their books and records. Consequently, KSC states that using invoice date as the date of sale is consistent with its internal sources of documentation, makes reporting such information easier, and thus, simplifies the verification process.

Department's Position

We agree with respondent that invoice/shipment date is the correct date of sale for all home market and U.S. sales of subject merchandise for KSC in this investigation.

Under our current practice, as codified in the Department's regulations at section 351.401(i), in identifying the date of sale of the subject merchandise, the Department will normally use the date of invoice, as recorded in the producer's records kept in the ordinary course of business. *See Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Administrative Review*, 63 FR 55578, 55587 (October 16, 1998) (''*Pipes and Tubes from Thailand*''). However, in some instances, it may not be appropriate to rely on the date of invoice as the date of sale, because the evidence may indicate that the material terms of sale were established on some date other than invoice date. *See Preamble to the Department's Final Regulations*, 62 FR 27296 (May 17, 1997) (''*Preamble*''). Thus, despite the general presumption that the invoice date constitutes the date of sale, the Department may determine that this is not an appropriate date of sale where the evidence of the respondent's selling practice points to a different date on which the material terms of sale were set.

In this investigation, in response to the original questionnaire, KSC reported invoice/shipment date as the date of sale in both the U.S. and home markets. To ascertain whether KSC accurately reported the date of sale, the Department requested in its May 28, 1999, Section B supplemental questionnaire that KSC report all sales made by KSC pursuant to orders with confirmation dates within the POI. In its June 23, 1999, supplemental response, KSC indicated that there were numerous instances in which terms such as price and quantity changed subsequent to the confirmation of the original orders in the U.S. and home markets. In view of the Department's acceptance of KSC's invoice date as the date of sale in previous cases, as well as the burden and expense for responding to the Department's request, KSC did not resubmit its sales or cost information on an order confirmation date-basis. For purposes of our preliminary determination, we accepted the date of invoice as the date of sale subject to verification. *See Preliminary Determination*, 64 FR 41218.

At verification, we carefully examined KSC's selling practices. We found that it records sales in its financial records by date of invoice/shipment. For both the home and U.S. markets, we reviewed several sales observations for which the material terms of sale (*i.e.,* price and quantity) changed subsequent to the original order. Based on respondent's representations, and as a result of our examination of the company's selling records kept in the ordinary course of business, we are satisfied that the date of invoice/shipment should be used as the date of sale because it best reflects the date on which material terms of sale were established for KSC's U.S. and home market sales.

We disagree with the petitioners' claim that order confirmation date is the most appropriate date of sale for KSC's U.S. and home market sales because the majority of KSC's sales required no change in material terms subsequent of the issuance of the order confirmation. The fact that terms often changed subsequent to the initial order confirmation suggests that these terms remained subject to change (whether or not they did change with respect to individual transactions) until as late as the invoice date. For sales that we reviewed, we found this to be true for material terms of sale such as price and quantity.

The Department's decision in *Russian Hot-Rolled* to use the order specification date as the date of sale for Magnitogorsk Iron & Steel Works (''MMK''), a Russian steel producer, was based on the fact that MMK stated that the terms of the sale are set in the order specification. *See Russian Hot-Rolled,* 63 FR 9314 (''MMK also stated that the date of the order specification would most likely be considered by the Department to be the most appropriate date of sale, because the terms of sale are set in the order specification''). Where order specifications were amended, MMK identified the sales containing such revisions and reported the date of the order amendment. Since there was no evidence on the record of that case indicating that, when no order amendment was provided, the terms of the sale for the merchandise shipped differed from the terms of sale set in the order specification, the Department accepted MMK's statement that the terms of the sale are set in the order confirmation, or in the order amendment. Furthermore, we note that in *Russian Hot-Rolled,* there was no discussion regarding the possibility or frequency of changes between the original order confirmation, any revised order confirmations, the invoice, and changes subsequent to the invoice.

The facts of the instant case are distinguishable. In the instant case, pursuant to our findings at verification, the Department determines that there are changes between the order confirmation date (*i.e,* the date of sale proposed by petitioner) and the invoice date (*i.e.,* the date of sale proposed by respondents). This fact distinguishes the factual record in the current case from the Department's decision in the *Russian Hot-Rolled* case. Therefore, in accordance with our regulations and pursuant to our findings at verification, we have determined that invoice date is the appropriate date of sale for KSC's sales, as it most accurately represents the date on which the material terms of sale are established. Because KSC provided verifiable information establishing the proper date of sale, we have not resorted to using facts available, as suggested by petitioners.

Comment 2: Critical Circumstances

Respondent argues that the Department calculated a preliminary dumping margin of 10.78 percent, which is well below the 25 percent threshold used by the Department to impute knowledge of less than fair value sales and injury when determining whether critical circumstances exist. Furthermore, respondent states that its data shows that KSC did not have ''massive imports'' within the meaning of the statute and regulation because its shipments actually declined from the base period to the comparison period. Consequently, respondent argues, the Department's finding of critical circumstances is not in accordance with law or supported by substantial record evidence. Lastly, respondent states that the time frame used by the Department to determine whether KSC had massive imports was wrong as a matter of law because the Department has no authority to examine a period of time that is disconnected with the date the petition was filed. Respondent argues that the legislative history of the critical circumstances provision indicates that Congress intended that the period of time examined to determine whether massive imports exist be the time following the filing of the petition compared to a prior period of time. Moreover, respondent argues that the press articles relied upon by the Department did not support the factual conclusion that KSC knew about this investigation. Respondent states that those articles contained general comments about the state of the U.S. steel industry, and covered a similar period of time as the other investigations against steel products conducted by the Department. Thus, respondent concludes, the Department's initial affirmative critical circumstances determination was unlawful.

Department's Position

For the reasons discussed below, we no longer find critical circumstances with regard to KSC or the ''all others'' companies. However, we continue to find critical circumstances for non-responding companies (Kobe, Nippon, NKK, and Sumitomo).

Section 735(a)(3) of the Act provides that if critical circumstances are alleged, the Department will determine whether: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

With respect to section 735(a)(3)(A)(ii) of the Act, in determining whether an importer knew or should have known that the exporter was selling CTL plate at less than fair value and thereby causing material injury, the Department normally considers margins of 25 percent or more and a preliminary ITC determination of material injury sufficient to impute knowledge of dumping and the resultant material injury. *See Certain Cut-To-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 31972, 31978 (June 11, 1997).

Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been ''massive,'' the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports during the ''relatively short period'' of over 15 percent may be considered ''massive.'' Section 351.206(i) of the Department's regulations defines ''relatively short period'' normally as the period beginning on the date the proceeding begins (*i.e.,* the date the petition is filed) and ending at least three months later.

1. KSC

With regard to KSC's imports, we find that there is no relevant history of dumping with respect to subject merchandise (discussed in the ''all others'' section below) and that the calculated margin is below the 25 percent threshold for determining whether the importers knew or should have known that the exporters were dumping the subject merchandise. For these reasons we determine that the first criterion under section 735(a)(3) of the Act has not been met and thus that critical circumstances do not exist for imports of KSC-produced CTL plate from Japan.

2. Kobe, Nippon, NKK, and Sumitomo

With respect to imports of subject merchandise sold by Nippon, NKK, Kobe, and Sumitomo, we have determined the final margins for those companies to be 59.12 percent (based on adverse facts available), which exceeds the 25 percent threshold. Therefore, we determine there is a reasonable basis to believe or suspect that importers knew or should have known that Nippon, NKK, Kobe, and Sumitomo were dumping the subject merchandise. Since the ITC, in this investigation, found a reasonable indication of present material injury to the relevant U.S. industry, the Department further determines that a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of the dumped imports. *ITC Preliminary Determination*, April 1999.

Since there is no verifiable information on the record with respect to Nippon, NKK, Kobe, and Sumitomo's import volumes, we must use the facts available in accordance with section 776(a) of the Act in determining whether there were massive imports of merchandise produced by these companies. With regard to aggregate import statistics, these data do not permit the Department to ascertain the import volumes for any individual company that failed to provide verifiable information. Nor do these data reasonably preclude an increase in shipments of 15 percent or more within a relatively short period for any of these companies. As a result, in accordance with section 776(b) of the Act, we have used an adverse inference in applying facts available, and determine that there were massive imports from Nippon, NKK, Kobe, and Sumitomo over a relatively short period. *See* Critical Circumstances Preliminary Determination Memo, Attachment II. Because both of the necessary criteria have been met, in accordance with section 735(a)(3) of the Act, the Department finds that critical circumstances exist with respect to CTL plate products imported from Nippon, NKK, Kobe, and Sumitomo.

3. ''All Others''—It is the Department's normal practice to conduct its critical circumstances analysis of companies in the ''all others'' group based on the experience of investigated companies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey* (''*Rebars from Turkey*''), 62 FR 9737, 9741 (March 4, 1997) (the Department found that critical circumstances existed for the majority of the companies investigated, and therefore concluded that critical circumstances also existed for companies covered by the ''all others'' rate). However, the Department does not automatically extend an affirmative critical circumstances determination to companies covered by the ''all others'' rate. *See Stainless Steel Sheet and Strip from Japan.* Instead, the Department considers the traditional critical circumstances criteria with respect to the companies covered by the ''all others'' rate.

In the preliminary critical circumstances determination of this investigation, we concluded that there is a reasonable basis to believe or suspect that critical circumstances exist for imports plate from Japan. In that preliminary determination, we satisfied section 735(a)(3)(A) of the Act through finding a history of dumping in conjunction with a determination that importers had knowledge of dumping. Specifically, we based our decision that there is a history of dumping on the existence of a dumping finding on carbon steel plate from Japan (43 FR 22937) (May 30, 1978), which was revoked based on changed circumstances on April 17, 1986 (51 FR 13039), and found that importers had knowledge of dumping by relying upon the alleged dumping rates contained in the petition, which were in excess of the 25 percent threshold. For our final critical circumstances determination, however, we find that there is no longer knowledge of dumping with respect to the ''all others'' category for purposes of satisfying 735(a)(3)(A).

In determining knowledge of dumping, we look to the ''all others'' rate, which is based on the weighted-average rate of all investigated companies. In this case, such a weighted-average rate must, of necessity, be based on the individual rate of KSC, the only investigated company that did not receive adverse facts available in this investigation. KSC's rate, applied to the ''all others,'' is 10.78 percent. This rate is not high enough to impute knowledge of dumping to the ''all others'' category. Furthermore, with respect to the history of dumping criterion, we conclude that the prior dumping finding on carbon steel plate from Japan does not reflect a relevant history of dumping for purposes of section 735(a)(3)(A). Specifically, the age of a previous dumping finding is taken into consideration in our determination of whether there exists a history of dumping. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination: Certain Polyester Staple Fiber From the Republic of Korea,* 64 FR 60776, 60778–79 (November 8, 1999) (where the Department stated that ''[b]ased on the recent existence of this order, there is sufficient evidence to determine that there is a history of dumping of the subject merchandise and a history of material injury as a result thereof''). Due to the fact that the dumping finding on carbon steel plate from Japan is twenty-one years old and was revoked thirteen years ago, we no longer consider there to be a relevant history of dumping with respect to subject merchandise. Since we determined above that importers did not have knowledge of dumping of subject merchandise, we find that section 733(e)(1)(A) of the Act has not been satisfied.

Because we find that there is no relevant history of dumping and that there is no evidence on the record of this investigation to support a finding that the ''all others'' companies had knowledge of dumping, the Department finds that critical circumstances do not exist for the ''all others'' category in this investigation.

Comment 3: Level of Trade

Respondent argues that the Department ignored record evidence and violated its established policies and regulations by grouping all three home market CTL plate sales distribution channels into a single level of trade (''LOT''). According to respondent, its home market is divided into three channels of distribution: (1) Sales to unaffiliated trading companies, (2) sales to unaffiliated end-users, and (3) sales to the affiliated trading company Kawasho Corporation (''Kawasho''). Respondent notes that in its Preliminary Determination, the Department incorrectly grouped the three channels into one home market LOT. According to respondent, there are actually two distinct LOTs in the home market: LOT 1, which consists of direct sales by KSC to unaffiliated trading companies and end-users (channels 1 and 2); and LOT 2, which consists of KSC's sales through its affiliated trading company Kawasho (channel 3). The respondent argues that each LOT involves significantly different selling activities which occur at different stages in the marketing process.

With regard to selling activities, respondent states that in LOT 1, KSC deals directly with its unaffiliated trading company and end-user customers, provides technical advice, negotiates price, manages credit risks, processes orders, enters relevant information into the specification control system, and makes freight and delivery and/or warehousing arrangements when necessary. In LOT 2, respondent states that Kawasho markets the product to its customers, forecasts demand, negotiates price, manages credit risks, processes orders, enters relevant information into the specification control system, makes freight and delivery arrangements, and maintains direct customer contact. Furthermore, respondent states that although KSC performed some common manufacturer-related selling activities (*e.g.,* confirming the order once production was agreed, warranty and rebate administration, and product brochures) for all three channels of distribution, this minor overlap of services does not control the analysis.

In regard to marketing stages, respondent states that KSC's sales directly to unaffiliated trading companies and end-users (channels 1 and 2) involve one stage in the marketing process (KSC to customer), while KSC's sales through Kawasho involve a different stage in the marketing process (KSC to affiliated trading company to customer). Respondent argues that the reported sales by Kawasho, just like sales by any other trading company, are a full level of distribution removed from KSC's direct sales. Respondent concludes that sales through LOT 1 (channels 1 and 2) are at a less-advanced stage in the marketing process than are Kawasho's sales.

Respondent also argues that, in the recent *Hot-Rolled Steel from Japan* investigation, the Department found that KSC had two home market LOTs: LOT 1, which contained sales directly to unaffiliated trading companies and end-users; and LOT 2, which contained downstream sales through Kawasho.

Petitioners argue that the Department should reject KSC's claim that there exist two LOTs in the home market. Petitioners argue that the record indicates that KSC performed virtually the same selling functions for its direct channel one sales to unaffiliated trading companies as it does for its channel three sales to unaffiliated end-users through Kawasho. According to petitioners, KSC's supplemental Section A response identified eleven selling functions performed in its channel three home market sales. Petitioners contend that the record indicates that KSC provided eight of these eleven selling functions for its channel one sales. Moreover, petitioners argue that of the eight selling functions KSC provides for its channel one sales, it provides seven of these functions in channel three sales. Petitioners state that the only difference is sales processing, which is performed by KSC in channel one sales and Kawasho in channel three sales. Petitioners also argue that KSC provides nearly the same level of services for both channels. According to petitioners, KSC provides exactly the same level of service for technical advice, warranty, warehousing, rebate administration, advertising, and freight and delivery services in its channel one and channel three sales. Petitioners state that the only difference between the two channels is in performing the specification control system, where KSC's role is ''high'' for channel one sales, but ''low'' for channel three sales.

Lastly, petitioners argue that when comparing the sales activities performed for a company's direct sales with those performed for its downstream sales, the Department looks to the combined sales activities of the company and its affiliated reseller. Therefore, petitioners contend that channel three sales should be placed in a separate LOT from channel one and two sales only if the sales services performed for those channel three customers were substantially different, regardless of whether it was KSC or Kawasho which performed the selling functions. Petitioners conclude that there is no evidence on the record of this proceeding to make such a determination.

Department's Position

We do not agree that KSC's home market sales are made at two distinct LOTs. In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine normal value (''NV'') based on sales in the comparison market at the same LOT as the export price (''EP'') or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on constructed value (''CV''), that of the sales from which we derive selling, general, and administrative (''SG&A'') expenses and profit.

To determine the LOT of a company's sales (whether in the home market or in the U.S. market), we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997) (''*CTL Plate from South Africa*'').

KSC sells subject merchandise in the home market through three channels of distribution: channel one involves sales by KSC to unaffiliated trading companies, channel two involves sales by KSC to unaffiliated end-users, and channel three involves sales by KSC's affiliate, Kawasho, to unaffiliated customers. For the preliminary determination, the Department found that KSC's sales to these three types of home market customers involved essentially the same level of selling functions. After a careful analysis of the information on the record, we continue to find that there was not a substantial difference in the selling functions performed by KSC in making sales to its unaffiliated customers and the combined selling functions performed by KSC and its affiliated company, Kawasho, for Kawasho's sales to unaffiliated customers. Therefore, we continue to find that there is one LOT in the home market.

In its discussion of LOT, KSC collapsed home market channels of distribution one and two into a single channel of distribution because its sales to unaffiliated customers, regardless of whether the customer is a trading company or end-user, involve the same selling functions. According to KSC, there are substantial differences in the selling activities performed by KSC for sales through this combined channel of distribution, hereafter referred to as channel 1, and its sales through channel 3 (*i.e.,* sales by Kawasho to unaffiliated customers).

In the preliminary determination, we conducted our analysis of LOT by comparing the selling functions performed for sales in the home market to the first unaffiliated customer. According to Exhibit 7 of its June 23, 1999, supplemental Section A response, KSC indicated that it provides the following selling activities for its sales to unaffiliated customers: technical advice, warranty services, advertising, freight and delivery arrangements, warehousing, inputting specification control system, sales processing, and rebate administration. KSC also indicated that the selling functions performed by itself and Kawasho, for Kawasho's sales to unaffiliated customers, consist of the following activities: technical advice, warranty services, advertising, marketing, freight and delivery arrangements, warehousing, inputting specification control system, sales processing, rebate administration, and demand forecasting. Comparing the selling functions performed for the first unaffiliated customer in channel one and channel three sales indicates that marketing services and demand forecasting are the only two selling activities performed for channel three sales that are not performed in channel one sales. Thus, eight of the ten[2] selling functions are performed in both channel one and channel three sales. Therefore, the information on the record indicates that the types of selling functions and activities performed by KSC on sales to unaffiliated customers as compared to the types of selling functions and activities performed by both KSC and Kawasho on sales to unaffiliated customers are not substantially different. KSC's argument that there are differences between these selling functions is not supported by the evidence on the record.

With regard to the degree of selling functions provided in each channel, we note that seven of the eight types of selling functions provided in both channels are provided in the same amount for both channel one and channel three sales. *See* KSC's June 23, 1999, supplemental Section A response at Exhibit 7. The only selling function provided for in different amounts is freight and delivery, which the respondent provides in a ''medium'' amount for channel one sales and a ''high'' amount for channel three sales. Lastly, we note that of the two selling functions provided for channel three sales, but not in channel one sales (*i.e.,* market services and demand forecasting), are provided for in a ''high'' level. Therefore, although there is a difference in the amount of market services, demand forecasting, and freight and delivery activities between channel one and channel there sales, we do not consider these differences to be substantial enough as to warrant finding two different LOTs on this basis alone.

The substantial similarity in types of selling activities and level at which they are performed belies KSC's argument that channel one and channel three sales are made at different marketing stages. Because the customer types are the same, the types of selling functions are substantially the same, and there are not substantial differences in the level of functions performed, we continue to find that there is one LOT in the home market.

Comment 4: CEP Offset

Respondent argues that it is statutorily entitled to a CEP offset because its home market sales include more sales functions and selling activities (*i.e.,* are at a more advanced LOT) than do its U.S. market CEP sales. Respondent states that a CEP offset adjustment is required where NV is established at a more advanced LOT than the LOT of CEP sales and a LOT adjustment cannot be determined. Respondent notes that in the recent investigation of *Hot-Rolled Steel from Japan,* the Department granted KSC a CEP offset, concluding that the CEP LOT was different and less advanced than KSC's two home market LOTs. *See Hot-Rolled Steel from Japan,* 64 FR at 24340–24341. Since the same factual scenario exists in the instant case, respondent argues that the Department should be consistent in its administration of the antidumping statute and find the same result here.

Respondent argues that the Department's characterization of selling services performed by Kawasaki and/or Kawasho for CEP sales is inconsistent with KSC's responses and fails to account for role in marketing and selling for CEP sales provided by KI. According to respondent, KSC performs some common manufacturer-related services in support of all steel sales in the home market and U.S. market, including technical advice, warranty service, and product brochures. According to respondent, these are the bulk of the services offered by KSC and Kawasho to CEP customers. Respondent contends that neither KSC nor Kawasho forecasts demand, provides marketing services, warehouses, processes the final sale, or maintains regular customer contact in CEP sales. Instead, respondent states that KI is responsible for these services in CEP sales.

Respondent claims that the record demonstrates that KSC's home market LOTs were at a more advanced stage of distribution and more remote from the factory than the CEP LOT. Respondent explains that the CEP LOT involves three marketing stages: (1) KSC sells to Kawasho, (2) Kawasho sells to KI, and (3) KI sells to unaffiliated end-users and distributors. Since KI is the company that sells the merchandise to the first unaffiliated customer in the United States, respondent states that the bulk of sales functions for CEP sales are performed by KI. Since the record does not provide an appropriate basis for quantifying a LOT adjustment on comparison market sales, respondent argues that the Department should grant KSC a CEP offset.

Petitioners argue that respondent has failed to establish that its home market sales are made at a more remote LOT involving more substantial selling functions than its CEP sales. According to petitioners, the combined selling functions of KSC/Kawasho for the CEP sales are very similar to the selling functions performed for KSC's home market sales. Petitioners contend that there are only three selling functions, out of eleven functions, which are performed on the home market sales at a higher level than they are performed for the CEP sales. Specifically, petitioners note that KSC performs the following services for its home market sales but not for CEP sales: warehousing, sales processing, and rebate administration. According to petitioners, these services are not substantial enough to warrant a finding that the home market sales were made at a more remote LOT. Moreover, petitioners note that KSC/Kawasho performed a slightly higher level of services for its CEP sales than for its home market sales in another three categories (*i.e.,* marketing service, freight and delivery arrangements, and demand forecasting). Petitioners conclude that because the home market sales did not involve substantially greater selling functions than the CEP sales, and were therefore not at a more remove LOT, these sales should be compared without a CEP offset.

Department's Position

We agree with respondent that it should be granted a CEP offset. In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A and profit. For CEP sales, the Department makes its analysis at the level of the constructed export sale from the exporter to the affiliated importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the LOTs between the NV and the CEP sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See CTL Plate from South Africa,* 62 FR at 61731.

[2] KSC actually reports eleven home market selling functions. Since KSC reported that neither it nor its affiliates provide inventory maintenance for sales through any channel of distribution, in either the home or U.S. markets, we have disregarded this selling function from our analysis.

In the preliminary determination, the Department denied a CEP offset adjustment to the NV of KSC's sales that were compared to CEP sales in the United States, because the Department preliminarily found that all of KSC's home market sales were made at the same LOT as the LOT of KSC's CEP sales in the United States. Upon further analysis of the record evidence, we now determine that the selling functions performed by KSC and Kawasho in Japan in connection with the CEP sales through KI, the U.S. affiliate, are less and different than the selling functions provided by KSC/Kawasho for home market sales to unaffiliated customers. Specifically, we note that in combination, KSC and Kawasho provide a high level of marketing services, warehousing, sales processing, rebate administration, and demand forecasting in the home market to unaffiliated customers, but did not provide the same level of services on its CEP sales to the United States. Instead, these services are provided by KI in the United States (*i.e.,* marketing services, sales processing, demand forecasting) or are not offered for CEP sales (*i.e.,* warehousing and rebates). *See* KSC's April 27, 1999, Section A response at Exhibit 13 and June 23, 1999, supplemental Section A response at Exhibit 7. We note that the Department verified this information and is therefore satisfied that it has substantial, reliable information to reach a decision as to the levels of trade at which KSC and its affiliates sell subject merchandise. *See* Sales Verification Report. Thus, after further examination of the record, the Department is now granting a CEP offset because the facts on the record indicate that KSC's CEP LOT is different from and less advanced than KSC's home market levels of trade and that the data on the record do not permit the Department to make a LOT adjustment based on the effect of the LOT difference on price comparability.

Comment 5: Downstream Sales to Affiliated Parties

Petitioners note that KSC sold through Kawasho subject merchandise to 26 affiliated resellers/processors in the home market and that such sales constitute a significant portion of the home market sales. Petitioners observe that although the Department's questionnaire required KSC to report the downstream sales, KSC replied that it is unable to report such sales for two reasons: (1) The affiliates are unable to ‘‘systematically distinguish'' CTL plate produced by KSC from that produced by other manufacturers, and (2) even if they could identify such merchandise, the affiliates' sales records do not contain the information concerning product characteristics that is necessary to construct the CONNUM. Petitioners note that KSC claimed that it can only determine the appropriate CONNUM based on the complete order information stored at KSC, which is obtained through KSC's order confirmation number.

Petitioners argue that during verification of one such affiliated processor, the Department learned that KSC's claim that the affiliated resellers/processors could not ‘‘systematically distinguish'' subject merchandise produced by KSC from that produced by other manufacturers is incorrect. According to petitioners, verification showed that the processor examined could use its internal, computerized documentation to electronically link sales invoices to KSC plate identification numbers. Thus, petitioners conclude that the affiliate can identify KSC as the manufacturer for each sale using the KSC plate identification number.

Moreover, petitioners argue that KSC's claim that the affiliated resellers/processors cannot report complete product characteristics necessary for constructing the CONNUM does not excuse KSC's failure to report the downstream sales. Petitioners note that verification revealed that the processor examined maintains records of four of the product characteristics used in constructing the CONNUM. According to petitioners, even if only partial information on the product characteristics was available from the affiliated resellers/processors, KSC should have complied with the Department's questionnaire by reporting its downstream sales to the fullest extent possible. In fact, petitioners claim that it is the Department's practice to use a modified matching program where there are missing product characteristics in the reported database. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada,* 61 FR 13815, 13830–31 (March 28, 1996) (‘‘*Plate from Canada*'').

Furthermore, petitioners argue that since the processor examined at verification electronically records the KSC plate identification number, KSC could have reported all product characteristics used in creating the CONNUM by linking these plate identification numbers to its own computerized production or sales records. Even if linking its own sales records to plate identification numbers supplied by the affiliates was not possible, petitioners argue that KSC could still have reported the complete product characteristics of the merchandise sold to the affiliated resellers/processors by examining the general characteristics of the merchandise sold to each affiliate. Specifically, petitioners note that the record indicates that KSC sold merchandise with a limited number of product characteristics to the processor examined at verification. Petitioners argue that since this processor maintains records with respect to four of the product characteristics, KSC could have deduced the remaining product characteristics from its general knowledge of the characteristics of the merchandise it sold to the processor. Therefore, petitioners conclude that KSC could have combined the characteristics supplied by the affiliate with the characteristics it can determine through its knowledge of the merchandise sold to the affiliate, and constructed the full CONNUM. Petitioners contend that all of the product characteristics necessary to comprise the CONNUM were available to KSC and could have been reported.

Moreover, petitioners claim that, contrary to KSC's statements, the verification report indicates that the processor examined can match sales invoices to the KSC order confirmation, which would allow KSC to construct a CONNUM for sales through this company. According to petitioners, the verification report indicates that the processor examined can electronically link its sales invoices to its production instruction slips, which contain the plate identification numbers. Petitioners contend that this allows the processor to identify all sales of plate produced by KSC. The petitioners assert that while the processor cannot electronically link its sales invoices to the KSC order confirmation number, it can manually match the plate identification number to the mill certificate, which lists the KSC order confirmation number. Therefore, petitioners argue, the processor can, for purposes of reporting downstream sales, match its sales invoices to the KSC order confirmation number through a combined electronic and manual process. Petitioners argue that the manual portion of this process is not unreasonably burdensome given the ample time allowed for response.

Petitioners conclude that since KSC incorrectly claimed that the affiliated resellers/processors could not identify KSC as the manufacturer of its purchased plate and did not report downstream sales to the best of its ability, the Department should apply adverse facts available for the sales to the affiliated resellers/processors that do not pass the arm's-length test.

Petitioners argue that section 776(a) of the Act directs the Department to use ''facts otherwise available'' because KSC failed to (1) provide ''necessary information'' for the calculation of NV, (2) KSC and its affiliated resellers ''withheld information that has been requested'', and (3) KSC ''failed to cooperate to the best of its ability to comply'' with the Department's request for data on sales of foreign like product made through affiliated resellers.

As adverse facts available, petitioners recommend that the Department treat the sales to the affiliates that fail the arm's-length test as having passed this test. Then, petitioners continue, for the U.S. sales that match to those upstream sales which had previously failed the arm's length test, the Department should apply as adverse facts available the highest calculated margin for any KSC CONNUM.

Respondent argues that the Department correctly used its upstream sales to the affiliated resellers/processors in place of downstream sales by those affiliated companies in the preliminary determination. Respondent states that it cannot report downstream sales to the first unaffiliated customer through the affiliated resellers/processors in the home market because the sales records of those affiliates do not permit systematic linkage of final sales data with relevant product characteristics. Without such product characteristics, respondent states that it cannot create a reportable CONNUM for these sales. To construct the CONNUM, respondent states that it must link its order confirmation number to the sales data of the affiliated resellers/processors. According to respondent, allowing KSC to report upstream sales in place of unreportable downstream sales is consistent with the Department's regulations and practice. As evidence, respondent cites to *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom,* 63 FR 33320, 33341 (June 18, 1998), where the Department allowed a respondent to report upstream sales to affiliates where they were unable to report downstream sales because of the affiliates' unsophisticated computer systems.

Respondent states that petitioners make three arguments in their effort to demonstrate that KSC should have reported the downstream sales from the affiliated resellers/processors. First, respondent states that petitioners maintain that it was possible for all affiliated resellers/processors to report downstream sales because one such affiliate could manually identify the manufacturer and link its downstream sales to the required product characteristics. The respondent observes that the verification exhibits indicate that while the production instruction slips record the plate identification number, it is hand-written and not entered into the system like other information in the documents. Therefore, respondent argues that the affiliated processor would have to manually examine its production instruction slips to identify KSC plate identification numbers and then manually link the production instruction slips to the mill certificate to obtain the KSC order confirmation number. According to respondent, this task is not possible for the processor examined, nor the other 25 affiliated resellers/processors, given the volume of sales involved and the tight time frame of this investigation.

Respondent states that the second argument made by petitioners is that KSC could have reported all product characteristics by having the affiliated resellers/processors report the limited product characteristics available in their computerized records and then having KSC provide the remaining characteristics either through linking its upstream sales to the affiliate (via the plate identification number) or through its general knowledge of the merchandise sold to the affiliate. According to respondent, this argument is incorrect and largely grounded on petitioners' hindsight analysis of the upstream sales to the examined processor on the present home market sales file. Respondent states that the processor examined can derive a limited database of sales containing plate specification, width, thickness, quantity, and price from its computerized sales/production records. However, respondent argues that the processor could only manually identify the original manufacturer of the CTL plate from each (physical) production instruction slip because the manufacturer-specific product identification number is physically hand-written, rather than electronically entered, on the instruction slip. Thus, respondent concludes that the affiliated processor is not able to systematically identify the plate manufacturer in the sales and production records.

Furthermore, respondent notes that petitioners suggest that KSC has the capacity to report the other product characteristics such as paint, patterns in relief, and descaling because products with these characteristics were not sold to the examined processor during the POI. According to respondent, this argument can only be made in hindsight and with the benefit of an already completed home market sales file. Respondent states that this analysis does not use the examined processor's, or the other affiliated resellers/processors', computerized sales records and begs the question of how such information would be reported without linking to KSC's order confirmation number. Respondent argues that petitioners are suggesting a multi-step process whereby KSC and Kawasho provide data that may or may not be relevant that the affiliate must match by a process of manual examination, all within the time frame of responding to the Department's questionnaires. Respondent states that given the practical limitations of reporting these sales within the statutory and regulatory schedules in place and the affiliates' inability to identify sales of subject merchandise except through a process of sale-by-sale manual examination, the Department must conclude that the only method for the affiliated resellers/processors to report accurate CONNUM information is to link back to Kawasaki's order confirmation number.

Lastly, respondent states that petitioners put forward a third argument that KSC should report incomplete CONNUMs based upon the limited product characteristic information recorded by the affiliated resellers/processors. Respondent states that petitioners would then have the Department plug the missing product characteristic data and use the downstream sales information for purposes of its margin calculation. According to respondent, the case cited by petitioners, *Plate from Canada,* as evidence supporting their argument is factually dissimilar to the instant investigation. Respondent argues that in *Plate from Canada,* a respondent was unable to identify product characteristics for ''a very small portion'' of secondary and excess prime merchandise U.S. market sales, and that the Department accepted the reporting of only ''relevant'' physical characteristics in ''this limited circumstance.'' In the instant investigation, respondent concludes, the downstream sales by affiliated resellers/processors (1) equal much more than ''a very small portion'' of home market sales and (2) would be missing product characteristics that cannot be dismissed as irrelevant.

Department's Position

We disagree with petitioners that KSC is able to report the downstream sales by the 26 affiliated resellers/processors. KSC is directly affiliated with one reseller/processor and is affiliated through Kawasho to an additional 25 resellers/processors. Jointly, the downsteam sales from these resellers/processors constitute a substantial portion of home market sales. In its questionnaire responses, KSC stated that these affiliates cannot report their downstream sales for two basic reasons: (1) the affiliates are unable to ''systematically distinguish'' CTL plate produced by KSC from that produced by other manufacturers, and (2) even if they could identify such merchandise, the affiliates' sales records do not contain the information concerning product characteristics that is necessary to construct the CONNUM.

During verification, we selected one of Kawasho's affiliated resellers/processors, referred to hereafter as Company X, to examine the feasibility of this affiliate reporting its downstream sales, in order to determine the veracity of KSC's representations. Having verified Company X's records and internal tracking systems, we agree with KSC that Company X is unable to use its computerized records to systematically link its sales invoices to (1) plate produced by KSC and (2) the KSC order confirmation number. During verification we found that Company X can electronically link its sales invoices to the relevant production instruction slip. This slip contains the hand-written, rather than electronically entered, plate identification number. Thus, Company X would have to manually search its production instruction slips in order to identify KSC-produced CTL plate. Furthermore, Company X stated during verification that, in its normal course of business, it manually matches the plate identification number found on the production instruction slip to the appropriate mill certificate, which is mailed to its customer. The mill certificate contains the order confirmation number that is used by KSC to construct the CONNUM. While petitioners are correct in that Company X must have an organized system in which it does this match, that does not diminish the fact that this process is manual and that Company X would have to search its records again for purposes of reporting downstream sales. Therefore, although Company X can combine a computerized and manual search process to identify plate produced by KSC and link it back to the KSC order confirmation number, given the number of sales Company X had during the POI, we find that this process is unreasonably burdensome given the time constraints of an antidumping investigation.

We also disagree with petitioners argument that KSC can link its own sales records to the plate identification numbers supplied by the affiliated resellers/processors, or use its knowledge of the types of products sold to those affiliates, in order to supply any missing product characteristics. This argument assumes that the affiliated resellers/processors can systematically identify both the manufacturer and the plate identification numbers. In the case of Company X, we found that it can electronically link its sales invoices to the relevant production instruction slip. Although the production instruction slip does contain the plate identification number, it is hand-written, rather than electronically entered onto the slip. Thus, Company X can identify KSC produced merchandise and the KSC plate identification number only through a manual search of its production instruction slips. Given the volume of sales at Company X, and the time constraints of an investigation, this manual search would be unreasonably burdensome.

Lastly, we disagree with petitioners argument that KSC should have reported whatever limited information concerning the product characteristics that comprise the CONNUM that is available through its, or the affiliates records. Each product characteristic is a vital and necessary component of the CONNUM used by the Department in order to match United States and home market sales. Reporting a partial CONNUM is of no use in our margin calculations in this investigation. As respondent points out, the case cited by petitioners as evidence supporting its position is factually distinguishable from the instant case. In *Plate from Canada,* the Department used a modified model match methodology for sales in the United States and home market where the respondent was unable to report the full product characteristics. In that case, the Department concluded that it was appropriate to conduct a modified model match on sales of excess prime merchandise for which there were limited product characteristics reported because (1) the Department verified that respondent reported all physical characteristics it could, (2) sales of such merchandise represented a very small portion of its home market and United States sales, and (3) the missing physical characteristics were not important to the respondent's customers or relevant to the way the product was sold. In the instant case, were the Department to require the affiliated resellers/processors to report the characteristics available to them, there is no evidence on the record to determine that the missing characteristics (*e.g.*, whether painted, heat treated, patterned, or descaled) are not important to the respondent's customers or irrelevant to the way the product is sold.

Comment 6: Currency for the Gross Unit Price of EP Sales

Petitioners observe that respondent negotiates its EP sales prices with unaffiliated trading companies in U.S. dollars and then converts this dollar price into a yen price using the exchange rate in effect a certain number of days after shipment. Petitioners note that respondent originally reported the gross unit price for EP sales in yen, but in response to a Departmental request, converted the yen prices into dollars (using the exchange rate in effect a certain number of days after shipment). Furthermore, petitioners note that respondent tracks the yen price, rather than the dollar price, as the price actually paid to KSC by the trading company and is the price KSC tracks through its internal books and records. In addition, petitioners note that the dollar price that appears on KSC's invoice contains the trading company's markup, and is therefore the price to the trading company's customer. However, petitioners observe that the yen price listed on the invoice is the price to KSC's customer, the unaffiliated trading company.

Considering the above facts, petitioners argue that the Department should use the gross unit price in yen for the purposes of its final determination. Petitioners cite the recent final determination in the *Hot-Rolled Steel from Japan* investigation, where the Department faced an identical set of facts for one of the respondents and found the yen price to be the appropriate gross unit price for use in the margin calculation. *See Hot-Rolled Steel from Japan,* 64 FR at 24345. In order to be consistent with *Hot-Rolled from Japan,* and because the yen price is the price that appears on the invoice, is paid to KSC, and is tracked through KSC's internal records, petitioners recommend that the Department use the yen price in its final determination.

Respondent urges the Department to use the dollar price of its EP sales to unaffiliated Japanese trading companies because EP sales are first negotiated and set in dollars. According to respondent, the final invoice contains the dollar price (which includes the trading company markup), the yen price (which does not include the trading company market), and the exchange rate used by KSC to convert from dollars to yen. Respondent explains that in its supplemental responses, it used the exchange rate listed on the invoice to convert the yen price into a dollar denominated invoice price, exclusive of the trading company markup. Respondent concludes that the Department should use the dollar price of EP sales because dollar-based prices represent the original negotiated price and currency. According to respondent, this is consistent with the Department's supplemental request that the sales be reported in the currency in which they are set.

In its rebuttal brief, respondent notes that the petitioners argue that the Department should be consistent with its recent final determination in *Hot-Rolled Steel from Japan,* where it used the yen-based prices for EP sales. Respondent notes, however, that petitioners have initiated legal action in the Court of International Trade (''CIT''), challenging the Department's use of the same yen-based EP prices in the *Hot-Rolled Steel from Japan* investigation that they are asking the Department to use in the instant case. In the instant case, respondent contends that the Department can simply and most accurately obtain dollar-denominated prices for use in its margin calculation by using KSC's reported dollar-based prices.

Department's Position

We disagree with the respondent that the Department should use the reported gross unit U.S. price in dollars and not the price in yen. Record evidence indicates that KSC negotiates the purchase price in dollars with unaffiliated Japanese trading companies and converts this price into yen using an exchange rate in effect a certain number of days after shipment. KSC records on the invoice the negotiated dollar value (which includes the trading company markup), the yen value (which does not include the trading company markup), and the exchange rate used by KSC to convert the dollar price to yen. The record also indicates that KSC is paid by its customers in yen and tracks the yen price from the invoice through its internal books and records.

The Department verified that the dollar price negotiated between KSC and the Japanese trading companies is converted to yen using the exchange rate in effect a certain number of days after shipment, which is listed on the invoice. This conversion is made pursuant to the terms of sale agreed upon by the parties at the time of the order confirmation. We also verified that KSC receives payment in yen and tracks the yen value from the invoice through its accounting records as part of its normal course of business. Therefore, since KSC (1) records the yen price negotiated between KSC and the unaffiliated trading company on the invoice, (2) receives payment in yen, and (3) the yen value is tracked through KSC's accounting records, we find that the price in yen is the appropriate price to use in our calculations.

In reporting U.S. sales to the Department, KSC originally reported the yen invoice price as the gross unit price for EP sales. Pursuant to the Department's request, KSC revised its U.S. sales listing and converted its yen invoice price into the dollar price originally negotiated between KSC and the unaffiliated trading companies using the exchange rate in effect a certain number of days after invoice/shipment. Since the yen invoice price is the proper starting point for calculating KSC's U.S. price, we converted the dollar price back into yen by applying KSC's reported exchange rate to the dollar price. However, in the normal course of our margin calculations, EP sales are converted from the foreign currency into dollars at an exchange rate determined by the Department to be in effect on the date of sale. Therefore, for purposes of our calculations, we converted the yen invoice price into dollars using the Department's exchange rate in effect on the date of sale.

Comment 7: Kawasho's Date of Payment

Petitioners note that of the five home market Kawasho sales verified by the Department, only two sales did not show a discrepancy between the reported payment date and the actual payment date. Petitioners observe that in response to these discrepancies, the Department examined an additional twenty home market Kawasho sales. Of these twenty, petitioners note that only seven sales reported the correct payment dates. Moreover, petitioners note that, of the 25 total sales examined, only nine contained the correct payment dates. Therefore, petitioners argue that the frequency of errors (*i.e.,* 64 percent) render the data unreliable. Since the ''necessary information is not available on the record'' with respect to Kawasho's payment dates, petitioners argue that the Department should reject Kawasho's reported payment dates in favor of facts available. In addition, petitioners contend that since Kawasho is in possession of the sales documents that show the correct date of payment, it should have reviewed those documents to ensure that it had correctly reported such information in its original sales response. Petitioners state that because respondent did not act ''to the best of its ability'' in providing accurate payment dates, the Department should employ an adverse inference. As adverse facts available, petitioners recommend that the Department base the credit expenses for all of Kawasho's home market sales on the shortest payment period for all such sales.

Respondent states that the payment date discrepancies found during verification applied to a group of national defense specification products sold to defense contractors in the home market. Respondent notes that, as demonstrated at verification, Kawasho relied on the payment term stated in the invoice to determine the actual payment dates included in the file because actual payment date information was not accessible by computer and could not be manually obtained given the time constraints of this investigation for Kawasho's large volume of home market sales. Respondent notes that the discrepancies resulted from instances of both early and late payment. Thus, respondent notes that for these sales, Kawasho both over- and under-estimated imputed credit expenses. Furthermore, respondent notes that besides the sales of national defense products, there is no evidence on the verified record that Kawasho's payment dates and credit expenses were systematically underreported. Respondent argues that since Kawasho correctly identified the payment date according to the invoice payment terms in the other verified sales, should the Department accept petitioners' arguments, the application of facts available should be limited to sales of national defense specification products and not categorically applied to all Kawasho sales as petitioners have suggested.

Respondent also argues that Kawasho could not systematically gather and report the actual payment dates of its customers because the payment date information contained in ''Collection Summary by Customer'' and ''Accounts Receivable by Customer'' is inaccessible by computer. According to respondent, Kawasho used the terms of payment to compute the payment date since Kawasho's customers almost always pay according to the payment terms.

Respondent states that of the 25 Kawasho home market sales examined, 22 were of sales of unique national defense specification products. Respondents argue that none of these products are sold in the United States and represent a very small percent of the total number of home market transactions. Respondent concludes that the payment date discrepancies should be viewed in the context that they primarily involved sales of national defense products. Therefore, respondent concludes that any conclusions drawn by the Department with regard to payment dates must be limited to Kawasho's sales of those products.

Department's Position

We agree with petitioners in part. During verification, we examined five home market sales made through Kawasho. Actual payment was received earlier than the reported date of payment for two of the sales, while actual payment was received later than the reported date of payment for a third sale. In response to these inaccuracies, the Department examined the reported date of payment for the twenty home market sales with the highest reported credit expenses. Of these twenty sales, the correct date of payment was reported for seven sales, the date of payment was incorrectly reported for seven sales (actual payment was received earlier than the reported date), and six sales had no reported date of payment. Since we identified the actual date of payment for the six sales with no reported date of payment, we have recalculated the credit expenses for these sales using the actual date of payment and, therefore, did not include these sales in our analysis of the sales with incorrectly reported dates of payment.

Of the remaining 19 sales reviewed, we found that 10 had incorrect dates of payment. We also found that four of the five customers associated with the total 25 sales we examined had at least one inaccurate date of payment. Although these 25 sales do not constitute a random sample of the home market sales made by Kawasho, we did not place any customer or time constraints on their selection. Therefore, we find that the results from these sales have value in representing Kawasho's home market sales. Thus, we find that the date of payment discrepancies found for four out of five customers are indicative of problems regarding date of payment for Kawasho's other customers.

Concerning respondent's argument that the inaccuracies found in the date of payment are limited to national defense specification products, we note that there were date of payment inconsistencies found during verification for sales of non-defense specification products. In fact, respondent states in its rebuttal brief that ''(t)he Department found two additional inconsistencies in Kawasho's reporting of payment dates for non-national defense specification products causing credit to be under-reported for one sale and over-reported for the other.'' *See* KSC's November 10, 1999, submission at 22. Thus, two of the ten sales which had an inaccurate date of payment were found to involve non-defensive specification products. These two sales indicate that the problem regarding the reported date of payment is not limited to national defense products. Moreover, even if we were to agree with respondent and limit our conclusions concerning this issue to only national defense specification products, we note that there is no evidence on the record identifying all of the specifications used for national defense products. As we are unable to rely upon the reported dates of payment to calculate home market credit expenses, we determine it is appropriate to resort to the use of facts available, pursuant to section 776(a)(2)(D) of the Act.

We disagree with petitioners that we should make an adverse inference in applying facts available. We verified that Kawasho is unable to systematically determine the actual date of payment. As verification Exhibit K–17 indicates, Kawasho officials had to use their accounts receivable by customer journal, collection summary by customer journal, outstanding collection details journal, and collection schedule journal in order to demonstrate the actual date of payment for the sales in question. Therefore, we find that Kawasho's use of the terms of payment to compute the payment date reflected a reasonable attempt to comply with the Department's request for information given the very large volume of Kawasho's home market sales and the time constraints of this investigation.

Therefore, in order to correct for these inaccuracies, we are using the information obtained during verification to adjust the date of payment reported for Kawasho's home market sales. Specifically, we calculated the difference between the actual date of payment and the reported date of payment for the 10 sales with incorrectly reported dates. We then summed the number of days difference for each of the 10 sales, including the sales for which the actual date of payment was earlier than the reported date of payment and the one sale for which the actual payment was after the reported date of payment. We divided this sum by the total number of sales examined with reported dates of payment (*i.e.,* 19 sales) to calculate the average number of days difference between actual and reported payment dates. Lastly, we subtracted this number from the reported date of payment for all of Kawasho's home market sales.

Comment 8: The Arm's-Length Test

Respondent argues that the Department does not have the authority to exclude sales made to affiliates for consumption from its margin analysis, and by doing so, has violated the antidumping statute and the WTO Antidumping Agreement. Respondent states that an examination of relevant statutory language of the Act reveals that Congress gave the Department no authority to disregard home market sales to affiliates for consumption. According to respondent, this lack of authority is apparent by noting that Congress gave the Department the authority to exclude home market sales to affiliates in only two provisions of the Act: (1) Section 773(a)(5) provides for the exclusion of sales to affiliates who sell to downstream purchasers in favor of using the downstream sales, and (2) section 773(b)(1) allows for the exclusion of certain sales from the calculation of NV that are made at less than the cost of production. In addition, respondent argues that two other statutory provisions, which define export price and constructed export price, also make explicit reference to affiliation. Respondent concludes from these passages that Congress selectively and deliberately accorded the Department authority to exclude sales to affiliated parties and knew how to provide guidance and instruction to the Department in this area. Respondent argues that there is no evidence in the statute that Congress intended the Department's authority to extend to home market sales to affiliates for consumption. By applying an arm's-length test to exclude sales for consumption, the Department has acted beyond Congresses' delegation of authority in this matter.

Further, respondent claims that the exclusion of non-matching sales violates the requirement that a ''fair comparison'' be made between sales in the home and U.S. markets. Respondent observes that the WTO Antidumping Agreement provides that a fair comparison of NV and export price requires the Department to include all sales absent a demonstration that their inclusion would affect price comparability. Respondent argues that the Department's arm's-length test, as applied, rejects any demonstrations or evidentiary standard in favor of an inflexible rule, which violates the due process protections of the Fifth Amendment to the Constitution, since the Department's rule makes the exclusion without providing any opportunity to present rebuttable evidence. However, respondent notes that the record of the case demonstrates that not all sales to affiliates are made at less than arm's-length because the Department's preliminary analysis indicates that many such sales passed the arm's-length test. Thus, respondent states that the Department's presumption about these sales is not universally or necessarily true. Respondent concludes that absent positive evidence showing sales to affiliated parties are not at arm's-length, the Department has no basis for not including them in its calculation of NV.

Lastly, respondent argues that the Department should apply its arm's-length test on a customer-specific basis, and not on a point-of-delivery basis as it did in the preliminary determination.

Petitioner argues that the Department has the authority to exclude from NV certain sales made to affiliated parties for consumption because they were made on a non-arm's-length basis and were outside the ordinary course of trade. Petitioners claim that the fact that merchandise was sold to an affiliated party for consumption rather than resale does not indicate that the sale was made at arm's-length or was otherwise made in the ordinary course of trade. Furthermore, petitioners note that the CIT has on numerous occasions upheld the Department's application of the arm's length test to home market sales. Petitioners state that the CIT ruling in *Usinor Sacilor* v. *United States,* 872 F. Suppl 1000, 1004 (CIT 1994), which upheld the application of the arm's-length test to home market sales to affiliated companies, is dispositive of this issue.

Petitioners argue that section 773(a)(1)(B) of the Act gives the Department the discretion to use the prices of sale made through affiliated parties in determining NV and permits, but does not require, the Department to base NV on sales to affiliated parties in the home market. Moreover, petitioners contend that the SAA directs the Department to ignore sales to affiliated parties which cannot be demonstrated to be at arm's-length prices for purposes of calculating NV. *See* SAA at 827. Petitioners argue that section 773(a)(5) of the Act, contrary to respondent's interpretation, is not a grant of authority to exclude sales of affiliated resellers, but is instead a grant of discretion to include such sales. Petitioners contend that there is nothing in the statute which in any way limits the Department's authority to exclude sales to affiliates based on the fact that they consume the merchandise. Moreover, petitioners claim that sales to affiliates for consumption can be just as unrepresentative of normal selling practices as sales to affiliates for resale. Petitioners assert that the critical question is whether there is any evidence to lead the Department to conclude that such sales were made on an arm's-length basis.

Petitioners also argue that it has been the Department's longstanding practice to exclude sales to affiliated parties ''where no related customer ratio could be constructed because identical merchandise was not sold to unrelated customers, (and the Department) is unable to determine that these sales were made at arm's-length.'' *See Certain Cold-Rolled Carbon-Steel Flat Products from Argentina,* 58 FR 37062, 37077 (July 9, 1993). Moreover, section 351.403(c) of the Department's regulations permits the use of sales to affiliates ''only if satisfied that the price (to the affiliated party) is comparable.'' Petitioners argue that it is the burden of the respondent to prove that sales to related parties are at arm's-length prices and that the Court of Appeals on the Federal Circuit (''CAFC''), in *NEC Home Electronics., Ltd.* v. *United States,* 54 F.3d 736 (Fed. Cir. 1995) at 744, rejected the argument that it is somehow the Department's burden to prove that a sale to an affiliated party was not made at arm's length. Therefore, petitioner concludes that absent any evidence that KSC's sales made to affiliated parties for which there are no sales of identical merchandise to unaffiliated parities were made at arm's-length, the Department should continue to determine that such sales were not made on an arm's-length basis and are outside the ordinary course of trade.

Department's Position:

We disagree with KSC. Section 773(a)(5) of the Act provides that sales of the foreign like product between affiliated parties ''may be used in determining NV.'' Thus, the statute provides the Department with discretion in determining whether to include sales between affiliates in the calculation of NV. The SAA, however, limits this discretion and provides that ''Commerce will continue to ignore sales to affiliated parties which cannot be demonstrated to be at arm's-length prices for purposes of calculating normal value.'' SAA at 827, citing section 773(a)(5) of the Act. Moreover, the Department's regulations state that NV may be calculated based upon sales between affiliated parties ''only if * * * the price is comparable to the price at which the exporter or producer sold the foreign like product to a person who is not affiliated with the seller.'' *See* 19 CFR 351.403(c).

As the CAFC has noted, ' ''[c]ommon sense, of course, would indicate that strictly by themselves sales to a related purchaser would be a questionable guarantee of a fair home market price.' '' *NEC Home Electronics* v. *United States,* 54 F.3d 736, 739 (Fed. Cir. 1995), *quoting Connors Steel Co.* v. *United States,* 527 F. Supp. 350, 354 (CIT 1981). ''There is a perceived danger that a foreign manufacturer will sell to related companies in the home market at artificially low prices, thereby camouflaging true [normal value] and achieving a lower antidumping duty margin.'' *NEC Home Electronics,* 54 F.3d at 739, *citing Ansaldo Componenti, S.p.A.* v. *United States,* 628 F. Supp. 198, 204 (CIT 1986) (''Related party home-market sales tend to be lower in price because related companies generally decrease prices to each other to the advantage of the principal entity'').

In order to determine whether sales to affiliated parties should be included in the NV calculation, the Department has consistently required respondents to demonstrate that the merchandise is sold to affiliates at arm's-length prices. In this regard, the Department treats prices to an affiliated purchaser as ''arm's-length'' prices if the prices to affiliated purchasers are on average at least 99.5 percent of the prices charged to unaffiliated purchasers. *See* Preamble to Antidumping Regulations, 62 FR 27295, 27355 (May 19, 1997); *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil,* 64 FR 61249, 61257 (November 10, 1999) (''*Cold-Rolled Steel from Brazil*''). As petitioners correctly note, this test has been affirmed by the courts. *See Usinor Sacilor* v. *United States,* 872 F. Supp. 1000, 1094 (CIT 1994). We note that this decision does not distinguish between merchandise sold for consumption or resale in affirming the application of the arm's-length test. Therefore, we reject KSC's argument that it is unlawful to exclude home market sales to affiliated purchasers where those sales are for consumption.

The Department's exclusion of KSC's home-market sales to affiliated parties that have not been demonstrated to be at arm's-length prices is consistent with the above-described law and practice. Contrary to KSC's arguments, these exclusions do not reflect the application of an irrebutable presumption. Instead, the arm's-length test provides respondents with an opportunity to demonstrate that including home market sales to affiliates in the calculation of NV is appropriate pursuant to section 773(a)(5) of the Act. Stated differently, a respondent which demonstrates that prices are at arm's length rebuts the presumption that ''a foreign manufacturer will sell to related companies in the home market at artificially low prices * * *.'' *See NEC Home Electronics,* 54 F.3d at 739. Moreover, the CAFC in *NEC Home Electronics* affirmed the CIT's decision which confirmed that the burden is on respondents to come forward with evidence demonstrating that sales to affiliated parties are at arm's-length prices. *Id.* at 744. *See* also *Cold-Rolled Steel from Brazil,* 64 FR 61257 (excluding sales to affiliates where no price ratio could be constructed because identical merchandise was not sold to unaffiliated customers).

In this case, KSC did not offer any evidence that such sales were made at arm's-length prices. While KSC is correct to note that the arm's-length test could not be applied to sales for which no identical merchandise is sold to unaffiliated parties, KSC did not offer any alternative means of demonstrating the arm's-length nature of such sales. Indeed, in the preamble to the Department's antidumping regulations, the Department indicated that, in addition to the arm's-length test, ''there may be other methods available'' of determining the arm's-length nature of sales to affiliated parties. However, without any evidence to the contrary, we must continue to conclude that, pursuant to section 773(a)(5) of the Act and 19 CFR 351.403(b), respondent has not demonstrated that sales to its affiliates were at arm's-length prices. Consequently we have continued to exclude such sales for purposes of calculating NV. As the Department has excluded such sales in accordance with the antidumping statute, there has been no violation of KSC's due process rights, as argued by KSC.

We also disagree with KSC's argument that the exclusion of such sales from NV violates the United States' obligations under the WTO Antidumping Agreement. As the CAFC in *Federal Mogul Corp.* v. *United States,* 63 F.3d 1572 (Fed. Cir. 1995), explained: ''GATT agreements are international obligations, and absent express Congressional language to the contrary, statutes should not be interpreted to conflict with international obligations.'' *Federal Mogul,* 63 F.3d at 1581. Indeed, the United States Supreme Court elaborated on this canon of construction. ''It has also been observed that an act of Congress ought never to be construed to violate the law of nations, if any other possible construction remains * * *.'' *Murray* v. *Schooner Charming Betsy,* 6 U.S. (2 Cranch.) 64, 118 (1804). *See also Fundicao Tupy S.A.* v. *United States,* 652 F. Supp. 1538, 1543 (CIT 1987) (''An interpretation and application of the statute which would conflict with the GATT Codes would clearly violate the intent of Congress.''); *Footwear Dist. and Retailers of America* v. *United States,* 852 F. Supp. 1078, 1092–93 (CIT 1994), *quoting* Restatement (Third) of the Foreign Relations Law of the United States, at 115, comment a, p. 64 (1987) (''Congress does not intend to repudiate an international obligation of the United States * * * Therefore, when an act of Congress and an international agreement * * * relate to the same subject, the courts, regulatory agencies, and the Executive Branch will endeavor to construe them so as to give effect to both.''). Rather, the statutory provisions discussed above implement the United States' obligations under the WTO Antidumping Agreement, including Article 2.4 cited by KSC, with respect to the calculation of NV. Because KSC's home-market sales to affiliated parties not demonstrated to be made at arm's-length prices affect price comparability, the statutory and regulatory scheme, as applied in this case, are consistent with Article 2.4 of the Antidumping Agreement. Thus, the United States has fully implemented its WTO obligations with respect to the calculation of NV in cases where home market sales to affiliated parties are not demonstrated to be made at arm's-length prices.

With respect to KSC's argument that the Department should apply its arm's-length test on a customer-specific basis rather than a point of delivery basis, we agree with respondent and have changed our methodology accordingly.

Comment 9: Kawasho's Warehouse Expenses

Petitioners argue that the Department should reject Kawasho's reported warehousing expenses because Kawasho's allocation methodology causes inaccuracies and distortions in these reported costs. Petitioners note that KSC, in its Section B response, stated that Kawasho incurs warehousing expenses for certain home market sales, but not for all such sales. Petitioners observe that KSC stated that Kawasho is unable to report transaction specific warehousing costs because it records its warehousing costs by product category, rather than on a sale-by-sale basis. Petitioners note that Kawasho allocated its warehousing costs to all home market sales by dividing its total warehousing expenses incurred for the CTL plate product category by the total tonnage sold of the CTL plate product category. Furthermore, petitioners state that, according to KSC, Kawasho's CTL plate product category includes both subject and non-subject merchandise. Because KSC's allocation methodology allocates warehousing costs to certain sales that were not warehoused, and the methodology includes non-subject merchandise, petitioners conclude that KSC's reported warehousing expenses are inaccurate and distortive.

Respondent argues that Kawasho's warehousing expenses were reported on the most specific basis possible, given how Kawasho maintains its internal books and records. According to respondent, Kawasho's warehousing expenses are maintained by product-category, rather than on a transaction-specific basis. Respondent argues that Kawasho has a CTL plate category that includes subject and non-subject merchandise. Since Kawasho keeps its records in this manner during the normal course of business, respondent argues that it is not feasible to report Kawasho's warehouse expenses on a more specific basis. Moreover, respondent argues that section 773(a)(6)(B)(ii) of the Act allows the Department to reduce NV for movement expenses, such as warehousing expenses, and that section 351.401(g)(4) of the regulations directs the Department not to reject an allocation methodology solely because the method includes expenses incurred with respect to sales of non-subject merchandise. Respondent argues that during verification, the Department examined the warehouse records kept by Kawasho and verified the accuracy of the numbers used for the calculation. Specifically, the Department examined ''the quantity and warehousing expenses listed for both subject merchandise product codes and non-subject merchandise product codes * * * (and) found no discrepancies.'' *See* Sales Verification Report at 44. Thus, respondent argues, there is no evidence on the record that the out-of-scope merchandise incurred a disproportionate amount of warehousing expense. Respondent concludes that the Department should reject petitioners' argument and continue to use Kawasho's warehousing expenses in the final determination.

Department's Position: While we prefer that respondents report warehousing charges on a transaction-specific basis, we are satisfied that, based on its records, Kawasho is unable to report its warehouse expenses on that basis. Moreover, we note that section 351.401(g) of the Department's regulations provides that we may consider allocated expenses and price adjustments when transaction-specific reporting is not feasible, provided we are satisfied that the allocation method used does not cause inaccuracies or distortions.

As we stated in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom,* 63 FR 33320, 33340 (June 18, 1998), ''while we do initially examine transaction-specific information on home-market sales, ultimately we calculate a weighted-average home-market price for comparison to U.S. sales. The averaging of net home-market prices has the effect of averaging the components used to calculate those net prices, including inland freight. Therefore, the use of an allocated expense would not necessarily result in a distortion of home-market prices.'' Although that case was referring to a respondent's inability to report transaction-specific inland freight expenses, we find that the same principle applies here.

KSC explained that Kawasho maintains its warehouse expenses on a product-category specific basis in its books and records, and that this product category contains both subject and non-subject CTL plate. *See* KSC's June 23, 1999, supplemental Section B response at 25. During verification, we examined Kawasho's warehouse expenses and found no evidence that such expenses could be reported on a transaction-specific basis. Since Kawasho does not maintain transaction-specific warehousing expenses, we agree with KSC that allocating Kawasho's total warehouse expense for subject and non-subject CTL over its total tonnage sold of subject and non-subject CTL plate is the most accurate per-unit expense that Kawasho can derive from its books and does not unreasonably distort the reported expense. Moreover, we are satisfied that KSC reported Kawasho's expenses in the most specific manner feasible and allocated these expenses reasonably for the calculation of NV. Accordingly, we have continued to use Kawasho's warehousing expenses in our final determination.

Comment 10: KI's Short-Term Interest Rate

Petitioners argue that the Department's verification report indicates that KSC did not fully report KI's short-term interest expenses. According to petitioners, the Department learned at verification that KI did not report the interest expenses it incurred with respect to (1) export sales of log and lumber products to Japan and (2) certain overnight loans that occurred during the POI. Because KI has not provided the interest rates paid on the above borrowings, petitioners contend that the information necessary to calculate KI's overall interest rate is not available on the record. Therefore, petitioners urge the Department, pursuant to Policy Bulletin 98.2, to recalculate KI's U.S. dollar short-term interest rate based on the average prime rate in effect during the POI.

Respondent asserts that the Department should reject petitioners' argument and use KI's reported short-term interest rate. Respondent argues that credit costs are imputed based on the time value of money, and not based on the cost of debt actually incurred. Respondent states that in this respect, it is important that a respondent provide an interest rate for imputing credit expense that reflects commercial reality. With respect to the overnight loans, respondent states that it excluded this rate as one that KI would not reasonably incur to finance receivables. Moreover, respondent claims that because the average interest rate for these loans is lower than that for the reported short-term borrowings, it would have actually benefitted by incorporating this interest rate into its reported interest rate, as it would have raised its CEP price by reducing U.S. credit expenses.

Respondent also states that it properly excluded the item ''Interest on Export Bills Discounted (Log & Lumber)'' from its calculation of a short-term interest expenses because the ''interest expense'' incurred does not even relate to actual interest paid for short-term borrowings to finance working capital requirements, but rather consists of discounted payments received by KI from the bank upon presentation of letters of credit. Moreover, respondent states that this interest expense is also incurred only by KI's Seattle office on sales of lumber products to Japan, and does not involve the sale of subject merchandise to the United States. Since KI's reported interest rate accurately represents a commercially reasonable payment for financing receivables, and this information was thoroughly verified by the Department, respondent argues that the short-term borrowing expenses for CEP sales as reported in KSC's Section C response are correct.

Department's Position: We agree with petitioners that KSC should have reported its interest expenses associated with overnight loans, but we disagree with petitioners that KSC should have reported the expenses associated with KI's export sales of log and lumber products to Japan. The Department calculates a respondent's imputed credit expenses using ''a short-term interest rate tied to the currency in which the sales are denominated. We will base this interest rate on the respondent's weighted-average short-term borrowing experience in the currency of the transaction.'' *See* Policy Bulletin 98.2 at 6, dated February 23, 1998. During verification, we learned that KI incurred interest expenses on overnight loans that were used for various corporate purposes during the POI. Since these overnight loans are short-term in nature, denominated in the currency of the sales transaction, and are obtained in the normal course of business, we determine that these loans should have been included in KSC calculation of KI's weighted-average short-term interest rate. During verification, we noted the total amount of interest paid by KI for these overnight loans obtained during the POI. Since the average balance of these loans for the POI is not on the record, we are unable to calculate the weighted-average POI interest rate for these loans. In light of our verification findings, we have added the POI interest expense paid on overnight loans to the reported interest paid on KI's short-term borrowings. Using this larger amount for interest paid during the POI, we have recalculated KI's short-term interest rate.

With respect to the expense KI incurred on its export sales of log and lumber products to Japan, we agree with KSC that it was proper not to report these expenses. During verification, we learned that KI's Seattle office exports log and lumber products to Japan on a letter of credit basis, with an extended term of payment for its Japanese customers. The expenses in question are the discounted payment KI receives from the bank upon presentation of the letter of credit. We have not included these interest expenses in our calculation of the short-term interest rate used to calculate imputed credit expense on U.S. sales because these expenses are not the best measure of the opportunity cost associated with sales of subject merchandise.

Comment 11: KSC's Usance Expenses

Respondent argues that the Department should not include the usance-related expenses incurred by KSC on the importation of certain raw materials. Respondent states that it purchases certain raw materials from trading companies who obtain usance loans from Japanese banks for the ''upstream'' purchase of the raw material from the actual supplier (*e.g.,* mining company). Respondent alleges that these usance loans between the bank and trading company are denominated in U.S. dollars. Respondent argues that although KSC negotiates directly with the bank and sets the terms of the usance loan obtained by the trading company, it is the trading company, not KSC, that receives the funds from the loan to purchase raw materials and eventually pays back the bank. Respondent states that in return for offering KSC an extended period of payment (*i.e.,* two to three months) on such raw material purchases, KSC pays the trading companies a yen-denominated interest amount. Respondent notes that KSC pays the purchase price, plus the interest amount, to the trading companies, not the banks.

According to respondent, there are two reasons for not including the expenses KSC pays to the trading companies in KSC's yen-based short-term borrowings. First, respondent states that including these expenses would violate the Department's practice by calculating a respondent's credit expenses based on another entity's borrowings. According to respondent, the Department has ''a clear preference for the actual borrowing experience of the respondent'' in calculating credit expenses and will incorporate usance interest only for loans actually obtained by a respondent. *See Certain Steel Concrete Reinforcing Bars from Turkey,* 64 FR 49150, 49155 (September 10, 1999). In the instant case, respondent states that it does not obtain usance loans, rather it purchases raw materials in yen from trading companies that obtain usance loans.

Respondent argues that where usance loans are obtained by another entity that is not the respondent, the Department will not include a usance-related interest in the short-term interest calculation. Citing to *Color Television Receivers from the Republic of Korea,* 55 FR 26225 (June 27, 1990), respondent states that the Department considered petitioners' contention that usance loan interest should be incorporated into respondent's short-term borrowing rate, even though respondent did not actually obtain usance loan funds. According to KSC, the respondent in that case argued that the usance loan funds were not provided to it directly, but rather to its suppliers. KSC states that the Department agreed with respondent and excluded the usance interest rate from the short-term interest calculation, concluding that ''these particular usance loans, which are not available for general financing purposes such as accounts receivable, were properly excluded from the calculation of the company's average short-term borrowing rate.'' *Id.* In addition, respondent argues that the Department should not impute a dollar-based interest rate to KSC's short-term borrowings that are exclusively in yen. Respondent argues that in *LMI-La Metalli Industriale S.p.A.* v. *United States,* 912 F.2d 455, 460–61 (Fed Cir. 1990), the CAFC noted that different interest rates correspond to different currencies and rejected the government's position that it could impute a lira-denominated interest rate to dollar-denominated U.S. sales. It concluded that the cost of credit ''must be imputed on the basis of usual and reasonable commercial behavior'' using short-term interest rates that conform with ''commercial reality.'' *Id.*

According to respondent, any short-term interest rate calculated for KSC must be a yen-based rate because its CTL plate transactions are yen-denominated transactions. Citing to Policy Bulletin 98.2 at 2, respondent contends that the Department's practice for calculating imputed credit expenses is to use a ''short-term interest rate on the respondent's weighted-average short-term borrowing experience in the currency of the transaction.'' Respondent contends that it pays the trading company for the raw material inputs in yen, receives payment from its customers in yen, and records all sales in its books in yen. Accordingly, respondent argues that the Department must denominate its short-term borrowing rate and credit expenses in yen.

Petitioners did not comment on this issue.

Department's Position: We have not included KSC's usance-related expenses in our calculation of KSC's imputed credit expenses. These expenses relate to the terms of sale between KSC and its suppliers and thus are similar to other fees and interest paid to suppliers, such as late-payment charges. Therefore, we did not include these expenses in determining KSC's short-term borrowing rate.

Comment 12: Deduction of Profit from CEP Sales

Respondent argues that the Department's methodology of deducting CEP profit from the U.S. price for CEP sales violates the ''Fair Comparison'' requirement established in Article 2.4 of the Antidumping Agreement, which provides that the Department may make adjustments to the extent needed to account for differences that affect price comparability (*e.g.,* profit). Respondent argues that profit is properly adjusted for in U.S. sales involving further manufacturing, where a portion of the U.S. profit is based on the additional value resulting from the physical change in the good. Unlike further manufacturing, respondent states that normal CEP goods and their home market counterparts are physically identical. Moreover, respondent contends that in the instant proceeding, there is no record evidence to support a finding that CTL plate sold in CEP transactions through KI and CTL plate sold by KSC in the home market are not physically comparable. Therefore, respondent contends that deducting CEP profit in KSC's CEP sales violates the fair comparison provision of Article 2.4.

Respondent argues that the inherent unfairness in the Department's methodology is even more evident when the CEP offset is added to the analysis. In situations where the Department grants an offsetting deduction of indirect selling expenses from normal value, this offset rebalances the comparison by deducting from normal value the same kind and character of indirect selling expenses deducted in determining CEP, but only in part. Respondent argues that profit assigned to the CEP selling expenses was deducted along with those expenses, but no profit was allocated to the selling expenses deducted from normal value, even though the express purpose of the offset is to put the transactions on an equal footing (*i.e.,* produce a fair comparison). Respondent concludes that in order to achieve a fair comparison, the Department must adjust its methodology and eliminate the automatic deduction of profit when determining CEP.

Petitioners argue that the Department should reject KSC's argument because Section 772(d)(3) of the Act states that ''the price used to establish constructed export price shall also be adjusted by * * * the profit allocated to the expenses described in paragraphs (1) and (2).'' Petitioners contend that the Department, in the preliminary determination, calculated CEP with an adjustment for profit in accordance with this statutory provision. In fact, argue petitioners, this statutory provision does not leave the deduction of profit to the Department's discretion. Rather, petitioners contend that this provision explicitly requires the Department to make this adjustment. Lastly, petitioners argue that the deduction of profit from CEP does not result in an unfair comparison in violation of the Antidumping Agreement, as claimed by Kawasaki. In support of their position, petitioners cite to the SAA, which states ''(the) deduction of profit is a new adjustment in U.S. law, consistent with the language of the Agreement, which reflects that constructed export price is now calculated to be, as closely as possible, a price corresponding to an export price between non-affiliated exporters and importers.''

Department's Position: We disagree with respondent. Consistent with section 772(d)(3) of the Act, we properly reduced CEP by the profit allocated to certain enumerated expenses (*e.g.,* commissions, credit, and warranties). Indeed, KSC does not argue that the Department's deduction of CEP profit is inconsistent with U.S. law, but instead argues that the deduction is inconsistent with U.S. obligations under Article 2.4 of the Antidumping Agreement. We do not agree. Section 772(d)(3) of the Act implements Article 2.4 of the Antidumping Agreement, which requires that a ''fair comparison'' shall be made between export price and normal value. However, Article 2.3 states that where there is no export price because of an affiliation between exporter and importer, a constructed export price may be calculated. When such constructed export price is used, Article 2.4 makes clear that there shall be ''allowances for costs * * * *and for profits accruing* * * *'' Article 2.4 (emphasis added). Thus, when promulgating section 772(d)(3) which provides for the deduction of CEP profit, the administration made clear that ''[t]he deduction of profit is a new adjustment in U.S. law, consistent with the language of the Agreement, which reflects that constructed export price is now calculated to be, as closely as possible, a price corresponding to an export price between non-affiliated exporters and importers.'' SAA at 823. In this regard, section 772(d)(3) clearly implements U.S. obligations under Article 2 of the Antidumping Agreement and the Department's deduction of CEP profit in this case is consistent with these obligations.

Comment 13: U.S. Sales Disclosed at Verification

The respondent argues that the Department should add the additional U.S. sale disclosed during verification to KSC's U.S. sales database. According to respondent, the Department's verification team asked KSC whether Kawasho made any direct sales to the United States other than through its U.S. affiliate, KI. In response to this question, respondent contends that it investigated whether Kawasho had any direct sales during the POI to the United States and uncovered a single, unreported, direct sale to the United States by Kawasho. Respondent argues that although this sale consisted of three separate shipments, the Department should consider it to be a single sale. Respondent states that upon finding this inadvertent omission, it immediately, and voluntarily, brought this sale to the verification team's attention. In order to demonstrate to the Department that there were no further unreported sales, respondent states that it provided the verification team with substantial documentation proving that the U.S. sales file is now complete. In addition, respondent notes that it provided a full sales trace package for this omitted sale, complete with all necessary documentation to support the sales adjustments KSC claims are associated with this sale. Respondent notes that the quantity and value and sales adjustment documentation were accepted by the verification team. Respondent argues that this lone sale is a clerical error and represents an insignificant portion of KSC's U.S. sales transactions, and if it is included in the U.S. sales database, will have a de minimis effect on the final dumping calculations.

Respondent argues that failure to include this sale in the Department's analysis, or to use the data relevant to this sale, would result in an inaccurate margin, in derogation of the statutes's purpose. Respondent cites to several cases where the Department added unreported U.S. sales to the respondent's U.S. sales database after the omission of such sales was discovered at verification in order to determine current margins as accurately as possible. Respondent states that in *Stainless Steel Sheet and Strip in Coils from the Republic of Korea,* 64 FR 30664, 30680 (June 8, 1999), the Department added one unreported U.S. sale to the file after its omission was discovered at verification. Moreover, respondent notes that in the Korean case, the Department accepted the corrective information concerning this sale nearly one month after the end of verification. Respondent states that in *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile,* 63 FR 31411, (June 9, 1998) (''Atlantic Salmon from Chile''), the Department added twenty-seven U.S. sales to the U.S. sales database that were disclosed during verification. *See Atlantic Salmon from Chile,* Analysis Memorandum for Pesquera Mares Australes, dated June 1, 1998, at 2. Respondent also cites to *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Mexico,* 64 FR 30790, 30812 (June 8, 1999) (*''Stainless Steel Sheet and Strip from Mexico''*), where the Department added sales to the sales database and stated that ''we have no reason to believe that respondent intentionally withheld from the Department the sales at issue here * * *'' we are satisfied that the record is now complete and accurate regarding this company's sales of subject merchandise during the POI.''' *Id.* (citation omitted). According to respondent, there is nothing on the record of the instant investigation that would support a conclusion that KSC deliberately withheld the one sale at issue from the Department. In addition, respondent cites to *Usinor Sacilor, Sollac* v. *United States,* 872 F. Supp. 1000, 1008 (CIT 1994), and argues that the Department's decision to reject information is governed by the interests of accuracy and fairness, and whether accepting new information will impose a burden on the Department. According to respondent, the most accurate margin requires that all sales be included in the sales databases, determining an accurate margin is the most fair calculation for all parties concerned, and adding the disclosed sale imposes only a minimal, if any, burden on the Department.

Respondent also argues that KSC's disclosed sale constitutes a minor correction to information already on the record and therefore should be accepted by the Department. As supporting evidence, respondent cites to *Notice of Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From the United Kingdom,* 64 FR 30688, 30701 (June 8, 1999), where the Department utilized its minor errors practice to accept a small quantity of additional home market sales mistakenly omitted by the respondent, that were disclosed at verification. In *Stainless Steel Sheet and Strip from Mexico,* 64 FR at 30812, respondent claims that the Department added unreported U.S. sales disclosed at verification to the sales database when the volume of sales at issue was a very small percentage of respondent's U.S. sales. Lastly, respondent cites to *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Taiwan,* 64 FR 17336, 17340 (April 9, 1999), where the Department accepted missing sales disclosed at verification because the sales were minor in scope and immaterial.

Respondent notes that the Department may also disregard the unreported sale altogether. According to respondent, in one case, the Department ignored unreported sales and declined to use facts available against the relevant sales in *Bicycles from the People's Republic of China,* 61 FR 19026, 19041 (April 30, 1996), and *Random Access Memory Semiconductors of One Megabit and Above from Taiwan (''DRAMs''),* 64 FR

56308, 56318 (October 19, 1999). Moreover, respondent notes that in DRAMs, the Department stated that ''the amount of sales in question is relatively insignificant, both in terms of quantity and value of respondent's home market sales. Thus, we are disregarding those sales discovered during verification because the volume of unreported sales is relatively insignificant.'' *Id.* In the instant case, respondent argues that the single unreported sale accounts for a very small percentage of KSC's total U.S. sales and will have a de minimis impact on the final margin.

Lastly, respondent argues that if the Department considers the sale to be an error in KSC's data that was disclosed after the deadline for submission of factual information, the sale should still qualify for inclusion on the U.S. sales database under the Department's policy for correcting clerical errors. The respondent argues that the Department, in *Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews,* 61 FR 42833, 42834 (August 19, 1996) (''*Certain Fresh Cut Flowers from Colombia*''), identified six criteria under which it will accept corrections of clerical errors. Respondent claims that the sale in question meets each of these criteria: (1) the sale was not disclosed because it was a simple oversight, (2) the corrective documentation provided to the Department at verification is reliable and was verified to be accurate, (3) KSC disclosed the unreported sale at the earliest reasonable opportunity and provided corrective information, (4) the clerical error allegation and corrective documentation were submitted well before KSC's due date for the administrative case brief, (5) adding the disclosed sale to the U.S. sales database does not require a substantial revision of the response, and (6) KSC's corrective documentation does not contradict information previously determined to be accurate at verification. For these reasons, respondent argues that its disclosed sale qualifies as a clerical error for which the Department should accept a correction.

Some of the petitioners argue that they have at numerous times over the course of this investigation raised the issue of whether Kawasho made any sales to the United States other than sales through its U.S. affiliate, KI. In each instance, petitioners state that KSC claimed in strong terms that all U.S. sales have been reported and that Kawasho only made sales to the United States through KI. Petitioners argue that the three sales disclosed at verification clearly contradict all of KSC's past denials and renders respondent's data unreliable. Moreover, petitioners claim that the strong manner in which respondent previously denied the existence of EP sales through Kawasho, indicates that KSC's omission cannot fairly be characterized as ''inadvertent.'' To the contrary, petitioners argue that the record strongly suggests that KSC acted aggressively to prevent the discovery of relevant information. Petitioners observe that KSC claims that the unreported sales are an isolated incident. According to petitioners, the issue is not merely of a small number of missing sales, rather it is about the discovery of an unreported kind of sale, through an unreported channel of distribution. Since the purpose of verification is to test a representative sample of sales for discrepancies, petitioners claim that the discovery of these unreported U.S. sales should be understood as representative of a substantial percentage of incorrectly classified and unreported sales. For this reason, petitioners contend that the Department cannot trust the veracity of KSC's sales data. Based on the discovery of unreported U.S. sales and KSC's false claim that it is unable to report downstream home market sales, petitioners conclude that KSC has failed the verification tests of its home market and U.S. sales. These petitioners argue that KSC has not acted to the best of its ability to provide information requested by the Department and urges the Department to apply total adverse facts available.

Other petitioners argue that the Department should apply partial facts available to the quantity of KSC's three unreported U.S. sales. Although the respondent characterizes its disclosure as voluntary, petitioners note that KSC did not report the unreported sales until several days into the verification, rather than at the outset. Furthermore, petitioners argue that the Department has applied adverse facts available under circumstances where the respondent has been more forthcoming than KSC in this case, such as where the respondent identified unreported U.S. sales on the first day of verification. *See Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany,* 64 FR 30710, 30732 (June 8, 1999) (''*Stainless Steel Strip from Germany*''), Petitioners also argue that even though KSC claims its omission was inadvertent, KSC had numerous opportunities during the course of the investigation to review its U.S. sales database and check it for completeness. Petitioners state that KSC clearly failed to do so.

Petitioners also note that although KSC provided a package of supporting documentation concerning its three unreported sales on the record at verification, there is no requirement that the Department use such information for its final determination. Petitioners cite to *Stainless Steel Strip in Coils from Germany,* where the respondent KTN similarly ''provided a complete packet containing copies of each of the relevant invoices'' at verification concerning previously unreported U.S. sales and claimed that the ''corrected information was verified.'' Petitioners contend that the Department emphasized the respondent's responsibility to provide complete U.S. sales information and rejected the corrective information in favor of partial adverse facts available. Petitioners contend that the facts are similar with regard to KSC and that given the untimeliness of the proffered information, the Department should consider only the quantity of the missing sales and reject all of the other transaction-specific data.

Petitioners also argue that the cases cited by respondent do not support its position. In *Atlantic Salmon from Chile,* 63 FR 31411, the Department's analysis memorandum shows that the unreported sales were made in the United States by an unaffiliated reseller. Petitioner concludes that, unlike the instant case, application of facts available in *Atlantic Salmon from Chile* would not have been proper since the respondent had no control over the conduct of the reseller. Moreover, petitioners state that in *Stainless Steel Sheet and Strip in Coils from Mexico,* 64 FR at 30812, unlike the instant case, the respondent reported the missing sales to the Department on the first day of verification. According to petitioners, reporting missing sales on the first day of verification is important because it is the only way to ensure that the disclosure is in fact voluntary. Petitioners argue that since KSC disclosed this sale while the Department was testing for completeness, KSC now finds itself in the position of attempting to dispel the inference that disclosure occurred because the Department's discovery of such sales would have been inevitable.

Lastly, petitioners argue that KSC is wrong in its statement that the Department can properly accept its new sales information as a ''correction of a clerical error.'' Petitioners observe that one of the criteria set forth in *Fresh Cut Flowers from Colombia* for correcting alleged clerical errors is that ''the error in question must be demonstrated to be a clerical error, not a methodological error, an error in judgement or a substantive error.'' In the instant case, petitioners assert that KSC's failure to report the sales was demonstrably not clerical. Rather, petitioners state that it was based on KSC's substantive error that Kawasho did not make any direct sales to a U.S. customer. Thus, petitioners concluded that the Department cannot accept the new sale as a clerical error. These petitioners recommend that the Department apply adverse facts available to the quantity of this sale. As adverse facts available, petitioner urges the Department to apply the highest calculated margin on KSC's other sales to the unreported sales and include the unreported sales in the overall weighted-average margin.

Department's Position: We disagree with petitioners that the three unreported sales disclosed at verification by KSC are not minor. During verification, while the Department was conducting various completeness tests, KSC voluntarily disclosed that it had found a previously unreported sale to the United States made by Kawasho. Since this sale comprised three individual shipments, and we are defining a sale as a single shipment in this investigation, we concluded that there were actually three unreported sales disclosed at verification. These sales, which were made by Kawasho directly to an unaffiliated Japanese trading company that in turn sold the CTL plate to its U.S. affiliate, are properly classified as EP sales through Kawasho. During verification, KSC provided substantial quantity and value information to support its assertion that there are no additional unreported U.S. sales. We examined this quantity and value information and are satisfied that there are no additional unreported U.S. sales.

The Department's practice is to accept new information during verification only when that information constitutes minor corrections to information already on the record, or when that information corroborates, supports, or clarifies information already on the record. We agree with KSC that these disclosed sales constitute minor corrections to information already on the record. Therefore, we included the information we accepted at verification concerning these three sales in our margin analysis for 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 subject merchandise from Japan that were entered, or withdrawn from warehouse, for consumption on or after April 30, 1999 (90 days prior to the date of publication of the *Preliminary Determination* in the **Federal Register**) for Kobe, Nippon, NKK, and Sumitomo, which received the petition rate of 59.12 as adverse facts available. In addition, we will continue to suspend liquidation of all entries of subject merchandise from Japan that were entered, or withdrawn from warehouse, for consumption on or after July 29, 1999 (the date of publication of the Department's preliminary determination) for KSC and those companies which received the ''all others'' rate. We shall refund cash deposits and release bonds for KSC and ''all others'' companies for the period between April 30, 1999 and July 29, 1999 (*i.e.,* the critical circumstances period). The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the NV 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
Kawasaki Steel Corporation	10.78
Kobe Steel, Ltd	59.12
Nippon Steel Corporation	59.12
NKK Corporation	59.12
Sumitomo Metal Industries, Ltd	59.12
All Others	10.78

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our determination. Because our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the 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 issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33235 Filed 12–28–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–826]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Italy

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

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Howard Smith or Maisha Cryor, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5193 or (202) 482–5831, respectively.

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''). In addition, unless otherwise indicated, all references are made to the Department's regulations at 19 CFR Part 351 (1998).

Final Determination

We determine that certain cut-to-length carbon-quality steel plate products (''CTL plate'') from Italy are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *''Suspension of Liquidation''* section of this notice.

Case History

Since the preliminary determination in this investigation (*Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products From Italy,* 64 FR 41213 (July 29, 1999) (''*Preliminary Determination*'')), the following events have occurred:

On July 28, 1999, ILVA S.p.A, (''ILVA'') alleged that the Department of Commerce (''the Department'') made a ministerial error in the preliminary determination because it incorrectly excluded from its analysis all of ILVA's U.S. sales that were entered under a temporary importation bond and subsequently re-exported to a country that is a party to the North American Free Trade Agreement (''NAFTA''). We disagreed with ILVA's allegation because our decision to exclude these sales was intentional and, thus, could not be considered a ministerial error (for further discussion of the ministerial error, see the Memorandum from Howard Smith to Holly Kuga dated August 17, 1999, on file in the Central Records Unit (''CRU'') in room B–099 of the main Department of Commerce building, under the appropriate case number). However, as noted in comment 6 of the comments below, for the final determination we have included these sales in our analysis.

In September 1999, the Department conducted sales and cost verifications of Palini & Bertoli S.p.A (''Palini'') and ILVA, the two respondents in the instant investigation. At verification, both respondents submitted corrections to the data used in the preliminary determination. These corrections are reflected in the data used in the final determination. A list of the corrections can be found in the public versions of the Department's verification reports which are on file in the CRU in room B–099 of the main Department of Commerce building, under the appropriate case number. For ILVA, see the memoranda from Howard Smith and James Nunno to The File dated October 29, 1999 regarding the sales and cost verifications. For Palini, see the memoranda from Maisha Cryor and Zev Primor to The File dated October 29, 1999 regarding the sales and cost verifications.

The petitioners (*i.e.,* Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation, Gulf States Steel, Inc., IPSCO Steel Inc., and United States Steelworkers of America) and the respondents submitted case briefs on November 5, 1999, and rebuttal briefs on November 12, 1999. On November 10, 1999, the petitioners, the only party to the proceeding to request a hearing, withdrew their request for a hearing. Therefore, we did not hold a public hearing.

Scope of Investigation

The products covered by the scope of this investigation are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.,* USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 1998, through December 31, 1998.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents covered by the description in the *''Scope of Investigation''* section, above, and sold in Italy during the POI to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. 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. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance (which are identified in Appendix V of the Department's March 1999 questionnaire): painting, quality, grade specification, heat treatment, nominal thickness, nominal width, patterns in relief, and descaling.

Because neither Palini nor ILVA had sales of non-prime merchandise in the United States during the POI, we did not use home market sales of non-prime merchandise in our product comparisons (*see, e.g., Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Sweden* 63 FR 40449, 40450, (July 29, 1998) (*''SSWR''*)).

Changes From the Department's Preliminary Determination

Except where noted in the comments below, we reached our final determination using the same methodology as that used in the preliminary determination. However, we made certain adjustments to the reported data based on our verification findings. Specifically, with respect to ILVA's sales data, we recalculated home market credit expenses, temporary importation bond's (''TIB'') and indirect selling expenses, and reclassified as entries under TIB certain U.S. sales which ILVA had incorrectly reported as having been entered for consumption. In addition, we revised the international freight expense reported for one U.S. sale. With respect to ILVA's cost data, we recalculated general and administrative expenses and revised the cost of iron pellets included in the reported costs. For Palini, we recalculated home market credit expenses, inventory carrying costs, home market warranty expense and indirect selling expenses and reclassified warranty expenses as direct selling expenses for sales in the home and U.S. markets. In addition, we revised the quantity and commission reported for one U.S. sale. With respect to Palini's cost data, we recalculated general and administrative expenses and recalculated the value of scrap and scale. For details regarding these adjustments, see the company-specific memoranda to The File dated December 13, 1999 regarding the calculations for the final determination.

Interested Party Comments

ILVA

Comment 1: Failure to Identify Overrun Sales in the Home Market

The petitioners contend that ILVA's failure to identify all overrun sales in the home market may understate the actual dumping margin because the margin will be calculated based on comparisons of lower-priced overrun sales in the home market to non-overrun sales in the United States. In its response to section B of the Department's questionnaire, ILVA noted that it reported as overrun sales those overrun quantities which it sold as secondary merchandise. However, the petitioners point out that ILVA failed to report as overrun sales those overrun quantities that were sold as prime merchandise to either the customer who placed the order or another customer. In addition, according to the petitioners, ILVA acknowledged that in instances where the original customer agreed to purchase the overrun merchandise, the price may or may not differ from the original price negotiated with the customer. Because ILVA failed to comply with the Department's questionnaire instruction to identify all overrun sales during the POI, the petitioners urge the Department to apply partial facts available in the final determination. As facts become available, the petitioners request that the Department treat as overrun sales all sales where the gross unit price is equal to or less than the maximum gross unit price of sales that ILVA identified as overrun sales.

ILVA claims that it properly reported as overrun sales those overrun quantities that were sold as prime merchandise to someone other than the customer who ordered the merchandise. However, ILVA notes that it could not report as overruns the excess prime merchandise that was sold with the order that generated the excess because its record keeping system does not separately identify such sales as overruns. According to ILVA, the record evidence (*i.e.,* the verification results and home market sales file) supports its claim that it properly reported prime merchandise overruns that were sold to someone other than the customer who ordered the merchandise. Moreover, ILVA claims that the data on the record show that the prime merchandise sales identified as overruns were made within the ordinary course of trade and, thus, should be included in the Department's analysis. Specifically, ILVA compared the price, quantity, sales terms, and product specifications of prime merchandise overrun and non-overrun sales in the home market and submitted statistics[1] which demonstrate, according to ILVA, that its sales of prime merchandise identified as overruns did not involve unusual product specifications or unusual sales terms (*i.e.* aberrational prices, unusual quantities, unusual delivery terms). Regarding prime merchandise overruns that ILVA sold with the order that generated them, ILVA maintains that the prices for these sales are arm's-length prices and that the sales are commercially indistinguishable from, and included as part of, other sales of prime merchandise. Since there is no evidence that any of ILVA's sales of prime merchandise, which may or may not contain overrun quantities, are outside the normal course of trade and, thus, would distort the margin calculation, ILVA submits that these sales should be used in the Department's analysis. Finally, ILVA asserts that the use of facts available is unsupported and unfair given that it reported overruns, where possible, and that the overruns not identified as such were part of commercial sales made within the ordinary course of trade.

DOC Position:

> We agree with ILVA. The relevant provisions of section 776 of the Act state that if—
>
> (1) necessary information is not available on the record, or
>
> (2) an interested party or any other person—
>
> (A) withholds information that has been requested by the administering authority or the Commission under this title * * * the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

ILVA reported overrun sales of prime merchandise where it could identify such sales in its records. However, ILVA's record keeping system does not identify as overruns the overrun quantities that were sold with the order that generated them. By not reporting such sales as overruns, ILVA did not withhold information from the Department because such information was not available. Moreover, the overrun information is unnecessary in the instant investigation since there is no evidence on the record that ILVA's failure to identify all overrun sales distorts the Department's margin calculation. Under such circumstances, the facts available remedy suggested by the petitioners is not warranted (*see Olympic Adhesives* v. *United States*, 899 F.2d 1565 (Fed. Cir. 1990); *see also Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada*, 61 FR 13815, 13830–31 (March 28, 1996)). To avoid distortion, the Department will exclude from its analysis sales that are outside the ordinary course of trade. Section 351.102 of the Department's regulations notes that sales outside the ordinary course of trade might include:

> Sales or transactions involving off-quality merchandise or merchandise produced according to unusual product specifications, merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm's length price.

The petitioners provided no evidence that any of ILVA's sales, including overrun sales of prime merchandise that may not have been included as overruns, were outside the ordinary course of trade. Therefore, with respect

[1] These statistics, which are proprietary, can be found on page 5 of ILVA's November 12, 1999 case brief.

to these overruns, we have accepted the information as reported.

Comment 2: Market Warehousing Expense

ILVA reported separate weighted-average warehousing expenses for direct sales and sales through resellers. The petitioners urge the Department to reject the warehousing expense reported for sales through resellers because it is not clear from the record that the sales for which the expense was reported are reseller sales. According to the petitioners, the sales file shows that the sales for which ILVA reported the reseller warehousing expense are sales from stock to the customer. If these were reseller sales, the petitioners contend that the file should indicate that the sale was through a service center to the customer, not from stock to the customer. Because of this contradiction, the petitioners request that the Department reject the reported reseller warehousing expense.

ILVA claims that the petitioners are mistaken because it only reported reseller warehousing expense for those sales that were identified as reseller sales in the home market sales file. Furthermore, ILVA claims that such sales were from the stock of the *reseller* and, thus, identifying a sale as being from stock and made by a reseller is not a contradiction. Finally, ILVA notes that contrary to the petitioners' suggestion, the reseller sales in question should not have been classified as sales through service centers because ILVA's resellers are not service centers.

DOC Position: We agree with ILVA. ILVA only reported reseller warehousing expense for those sales that were identified as reseller sales in the home market sales file. Moreover, the fact that ILVA's home market sales file identifies the resellers' sales as being from stock is consistent with information on the record indicating that the resellers sold merchandise from their warehouses. Thus, we have accepted the reseller warehousing expense as reported.

Comment 3: Correcting Data Files in Accordance With Verification Findings

The petitioners request that the Department adjust the reported general and administrative expense ratio and the reported cutting costs in accordance with its verification findings. Also, the petitioners request that the Department recalculate home market credit expense using the correct interest rate identified at verification. ILVA agrees with the petitioners.

DOC Position: We agree with both parties. We adjusted the reported costs and general and administrative expense ratio as appropriate. In addition, for the final determination we recalculated home market credit expense.

Comment 4: Failure To Establish the Market Price of Electricity

The petitioners claim that ILVA was unable to demonstrate that the price it paid to purchase electricity from an affiliated party is an arm's-length price. In addition, the petitioners assert that ILVA did not demonstrate that the affiliated party's price is greater than the cost of production since it did not provide documentation to support the affiliate's reported cost of producing electricity. Therefore, as facts available, the petitioners request that the Department base the electricity cost used in the final determination on the greatest electricity price reported in Appendix D–6(d) of ILVA's June 29, 1999 supplemental questionnaire response.

ILVA maintains that the petitioners' claim is without merit because it did, in fact, demonstrate that it paid a market price for electricity and that the price was greater than the affiliate's cost of producing electricity. During the POI, ILVA purchased electricity from both an affiliated and an unaffiliated party. According to ILVA, the disparity in the quantities of electricity purchased from these two parties precludes one from comparing the parties' prices in order to determine whether the affiliated party price is a market price. ILVA notes that it was unable to obtain actual electricity prices that the unaffiliated supplier charged other parties. Likewise, ILVA notes that, for reasons which are proprietary, it was unable to provide electricity prices that the affiliated supplier charged other parties. Thus, in order to provide the Department with a price comparison, ILVA compared the affiliated party price to a constructed unaffiliated party price. Specifically, ILVA used electricity rates published by the unaffiliated party to construct a weighted-average unit price that the party would have charged ILVA if all purchased electricity had been supplied by the unaffiliated party. ILVA points out that during the verification Department officials examined the calculation of the constructed unaffiliated party price and found no indication that the constructed price was based on inaccurate or incomplete information. Moreover, ILVA notes that the constructed price is based on publicly available information and, thus, it is reliable. Furthermore, ILVA submits that the constructed unaffiliated party price overstates the actual price that ILVA would pay for electricity since it is based on published rates that do not take into account the discounts that large consumers of electricity, such as ILVA, are able to negotiate. Finally, ILVA states that during the verification Department officials examined source documents supporting the affiliate's cost of producing electricity and found nothing to suggest that the documents were unreliable. For the foregoing reasons, ILVA urges the Department to accept the reported electricity costs.

DOC Position: We agree with ILVA. Although ILVA was unable to provide evidence of market prices based on actual transactions between unaffiliated parties, in response to the Department's request for a market price, ILVA used electricity rates published by its unaffiliated supplier to construct a weighted-average market price between unaffiliated parties. At verification, we examined the information used to construct that price and found no discrepancies. Moreover, at verification, we accepted the consumption and rate data provided by ILVA's affiliated electricity supplier, which demonstrated that the prices it charged ILVA are greater than its cost of production. Therefore, we have determined that the use of facts available to value electricity is unwarranted for the final determination.

Comment 5: Failure To Establish the Market Price of Iron Pellets

In the preliminary determination, the Department found that ILVA failed to establish that the price it paid to purchase iron pellets from an affiliated party was a market price. Therefore, in reaching its preliminary determination, the Department valued iron pellets using the weighted-average Italian import values of iron ore as provided by the petitioners in their July 8, 1999 submission.

ILVA contends that the Department should not rely on the values submitted by the petitioners for two reasons. First, the value that the petitioners submitted is for iron ore and iron ore concentrates while ILVA only purchased iron pellets. Thus, the value that the petitioners submitted is for a basket of products that is overly broad. Second, it is important to identify the iron content of products before comparing their prices; however, there is no mention of iron content in the information submitted by the petitioners. Therefore, ILVA calls on the Department to reject the petitioners price data, which ILVA characterizes as general and incomplete, and to value iron pellets using verified information.

The petitioners urge the Department to continue to value iron pellets using the Italian import price for iron ores and concentrates for three reasons. First, ILVA failed to demonstrate that the Italian import value of iron ores and concentrates is unrepresentative of the costs incurred by ILVA for iron pellets. Second, ILVA submitted the ''verified'' information regarding the market price of iron pellets at verification which is after the regulatory deadline for submitting factual information. The petitioners note that section 351.301(b)(1) of the Department's regulations provides that in an antidumping duty investigation, factual information is due no later than:

> Seven days before the date on which the verification of any person is scheduled to commence, except that factual information requested by the verifying officials from a person normally will be due no later than seven days after the date on which the verification of that person is completed.

The petitioners assert that there is no evidence on the record that the Department requested this information from ILVA. Therefore, the petitioners maintain that the ''verified'' information is untimely and should be rejected. Finally, the petitioners point out that the ''verified'' information consists of a constructed market price for iron pellets which is based, in part, on costs incurred by a Dutch producer and, thus, this information is not representative of the price ILVA would have actually paid to purchase iron pellets from its suppliers. For the foregoing reasons, the petitioners request that the Department reject the ''verified'' information and continue to value iron pellets using the Italian import value used in the preliminary determination.

DOC Position: We agree with ILVA. During the POI, ILVA purchased iron pellets from an affiliated supplier and a supplier which it identified as an unaffiliated party. In order to demonstrate that the affiliated party price for iron pellets is a market price, ILVA compared the prices that it paid its two suppliers for iron pellets. However, we preliminarily determined that ILVA and the supplier whom ILVA identified as an unaffiliated party are, in fact, affiliated pursuant to section 771(33)(F) of the Act. Thus, as noted above, for the preliminary determination we disregarded the prices that ILVA paid for iron pellets and valued the pellets using, as fact available, the price supplied by the petitioners. However, in making that decision, we stated in the preliminary notice that we were going to disregard the transactions whereby ILVA purchased iron pellets unless ILVA could demonstrate that such transactions reflect a market value. In keeping with this position, our verification outline requested ILVA to provide information regarding its claim that it bought iron pellets from affiliated parties at world market prices. ILVA provided both a constructed market price for iron pellets and an actual iron pellet price that one of its suppliers charged certain other customers during 1998. We have accepted this information because (1) during the verification ILVA provided this information in response to our request and, thus, the information is timely according to section 351.301(b)(1) of the Department's regulations; and (2) there is no information on the record to indicate that the actual price that ILVA's supplier charged certain other customers during 1998 is not representative of a market price for iron pellets. Therefore, for the final determination, we used the information obtained at verification to value iron pellets in accordance with section 773(f)(3) of the Act.

Comment 6: Treatment of U.S. Sales Entered Under Temporary Importation Bond

ILVA alleges that the Department should not have excluded from its preliminary analysis its sales of merchandise which entered the United States under TIB and was subsequently re-exported to Canada.[2] ILVA has taken this position because it believes that the U.S. law implementing the NAFTA requires the Department to assess antidumping and countervailing duties on such entries. Based on article 303(3) of the NAFTA, ILVA contends that merchandise which enters the United States under a TIB and is subsequently re-exported to another NAFTA party is considered ''entered for consumption'' and is therefore subject to all applicable customs duties. Article 303(3) states:

> Where a good is imported into the territory of a Party pursuant to a duty deferral program and is subsequently exported to the territory of another Party, or is used as a material in the production of another good that is subsequently exported to the territory of another Party, or is substituted by an identical or similar good used as a material in the production of another good that is subsequently exported to the territory of another Party, the Party from whose territory the good is exported: (a) shall assess the customs duties as if the exported good had been withdrawn for domestic consumption * * *.

Moreover, ILVA notes that Congress implemented NAFTA article 303 by amending the Tariff Act of 1930 as follows:

> [N]o merchandise that is subject to NAFTA drawback * * * that is manufactured or otherwise changed in condition shall be exported to a NAFTA country * * * without an assessment of a duty on the merchandise in its condition and quantity, and at its weight, at the time of its exportation * * * and the payment of the assessed duty before the 61st day after the date of exportation of the article. * * *.

North American Free Trade Agreement Implementation Act, § 203(b)(5)(B), *codified at* 19 U.S.C. § 81c(a). Furthermore, ILVA notes that 19 U.S.C. § 333, which defines certain imported goods that are not subject to 19 U.S.C. § 81c(a), states that:

> Nothing in this section [concerning goods subject to NAFTA duty deferral and drawback] or the amendments made by it shall be considered to authorize the refund, waiver, or reduction of countervailing duties or antidumping duties imposed on an imported good.

Based on these provisions, ILVA asserts that the Department has a statutory mandate to assess antidumping and countervailing duties on goods entered under a TIB and then re-exported to Canada.

Additionally, ILVA points out that in *Oil Country Tubular Goods From Japan: Preliminary Results and Recission in Part of Antidumping Duty Administrative Review*, 64 FR 48589 (September 7, 1999) (*OCTG from Japan*) the Department commented on goods which were imported under TIBs and re-exported to Canada stating that ''the TIB status of such entries does not necessarily insulate [them] from the assessment of antidumping duties'' (*OCTG from Japan*, 64 FR at 48591). However, ILVA also notes that in *OCTG from Japan,* the Department concluded from article 1901.3 of the NAFTA that ''if it is possible to read the NAFTA rules in a manner consistent with the law and practice discussed above [the antidumping law and Departmental practice regarding TIB entries], the entries in question [TIB entries re-exported to Canada] should not be subject to antidumping duties'' (*OCTG from Japan,* 64 FR at 48591). Article 1901.3 provides that:

> No provision of any other Chapter of this Agreement shall be construed as imposing obligations on a Party with respect to the Party's antidumping law or countervailing duty law.

ILVA makes the following points regarding the Departments comments in *OCTG from Japan.* First, ILVA maintains that the Department must base its opinion on this issue on U.S.

[2] However, ILVA requests that the Department continue to exclude from its analysis of all ILVA's TIB entries that were re-exported to non-NAFTA parties.

law, not the NAFTA. According to ILVA, the plain language of 19 U.S.C. §§ 81c(a) and 333 unambiguously requires the Department to assess antidumping duties on ILVA's TIB entries that were re-exported to a NAFTA party (''NAFTA TIB entries''). While ILVA acknowledges that the Department may be correct when it observed in *OCTG From Japan* that the NAFTA ''does not compel the assessment of antidumping or countervailing duties that would not otherwise be applied under a party's domestic law,'' ILVA notes that in implementing the provisions of the NAFTA, Congress has required the Department to assess antidumping and countervailing duties on NAFTA TIB entries. Specifically, ILVA points out that the House Report on the NAFTA Implementation Act explains that Congress implemented article 303(3) of the NAFTA because it believed it ''critical to ensure'' that the NAFTA member countries do not become an ''export platform'' for materials produced in other regions of the world (*see* H.R. Rep. No. 103–361 (I), at 39–40 (1993), reprinted in 1993 U.S.C.C.A.N 2552, 2589–2590). According to ILVA, were the Department to adopt a practice of excluding NAFTA TIB entries, the Department's actions would contravene the expressly stated intent of Congress. Finally, ILVA observes that the Department's analysis in *OCTG From Japan* strongly suggests that it may exclude NAFTA TIB entries based on the fact that they are not entries for consumption. However, ILVA maintains that in implementing the NAFTA, Congress simply directed the Department to assess antidumping and countervailing duties on NAFTA TIB entries without defining such entries as being for consumption. Therefore, whether or not the entries are for consumption is immaterial in deciding whether to assess antidumping and countervailing duties on NAFTA TIB entries.

Additionally, ILVA notes that the Court of International Trade (''CIT'') has treated the Department's normal practice concerning TIBs as applying equally to countervailing and antidumping duties. Therefore, ILVA submits that if the Department were to continue to exclude ILVA's NAFTA TIB entries from its analysis in the antidumping duty investigation, it must also do so in the countervailing duty investigation. Nevertheless, ILVA contends that unless advised to the contrary, the U.S. Customs Service (''Customs'') will collect antidumping and countervailing duties on ILVA's NAFTA TIB entries. Therefore, if the Department continues to exclude ILVA's NAFTA TIB entries from its analysis, ILVA requests that the Department instruct Customs to liquidate without liability for countervailing or antidumping duties, all TIB entries by ILVA that are subsequently re-exported to a NAFTA country.

The petitioners assert that the NAFTA and U.S. law are clear on this issue—the TIB entries in question are excluded from dumping margin calculations, but not exempted from the assessment (*i.e.*, collection) of antidumping and countervailing duties.[3] According to the petitioners, ILVA's reliance on article 303(3) of the NAFTA and 19 U.S.C. sections 81c(a) and 333 is misplaced. The petitioners contend these provisions do not address the NAFTA's effect on U.S. antidumping and countervailing law; rather they deal with duty drawback and deferral programs and the collection of customs duties by Customs. The petitioners hold that Customs statutes, regulations, rulings and practices are not binding on the Department and, accordingly, ILVA's reliance on such is not determinative. On the other hand, the petitioners claim that article 1901.3 of the NAFTA is an explicit statement by the parties to the agreement that the agreement does not control the application of each parties antidumping and countervailing law. In addition, the petitioners disagree with ILVA's position that ''U.S. law and not the wording of the NAFTA should control the Department's conduct in this matter.'' On the contrary, the petitioners believe that both the U.S. laws necessary to implement the NAFTA and the NAFTA itself are dispositive of U.S. obligations under the agreement. If this were not the case, the petitioners argue that all of the NAFTA provisions not specifically addressed in the U.S. statute implementing NAFTA would have no effect, leaving the United States in the position of having not adopted the NAFTA in its entirety. Thus, the petitioners contend that ILVA cannot argue that article 1901.3 of the NAFTA is without effect. Moreover, the petitioners maintain that sections 81c(a) and 333 of the statute implementing the NAFTA were included so as to preclude any conflict between the NAFTA and the customs statutes in existence prior to implementation of the NAFTA. According to the petitioners, the absence of specific antidumping and countervailing duty provisions in the statute implementing the NAFTA is proof that, consistent with article 1901.3 of the NAFTA, the current U.S. law and practice controls the treatment of TIB entries for purposes of calculating dumping margins (*i.e.,* excluding such entries from the margin calculation). Moreover, the petitioners state that in *OCTG From Japan*, the Department noted that ''the parties [to NAFTA] made clear that NAFTA did not require any changes in antidumping duty law or practice'' (*OCTG From Japan*, 64 FR at 48590–91). Thus, the petitioners hold that the Department's exclusion of NAFTA TIB entries from its analysis in the preliminary determination is appropriate because it is consistent with existing law and Departmental practice which has been upheld by the CIT (*see Titanium Metals Corp.* v. *United States,* 901 F. Supp. 362, 367 (Ct. Int'l Trade 1995)). Nevertheless, the petitioners note that sections 81c(a) and 333 of the statute implementing the NAFTA and Article 303(3) of the NAFTA compel Customs to collect antidumping and countervailing duties on ILVA's NAFTA TIB entries as though the entries were withdrawn for domestic consumption. The petitioners note that this position is consistent with the Department's analysis in *OCTG From Japan.* Although the implementation of the NAFTA may lead to differing results in the manner in which the Department and Customs treat NAFTA TIB entries, the petitioners assert that the pertinent articles of the NAFTA and the U.S. customs law are unequivocal—NAFTA TIB entries must be excluded from dumping margin calculations, but not exempted from the assessment (*i.e.*, collection) of antidumping and countervailing duties.

DOC Position: Article 303 of the NAFTA addresses duty drawback and duty deferral programs, including TIB. In particular, Article 303(3) provides that merchandise entered into the United States under a TIB and subsequently re-exported to another NAFTA party shall be considered to be entered for consumption and shall be subject to all relevant customs duties. No party in this case disputes the requirement, established by Article 303, that the Department assess antidumping duties on subject merchandise entered under a TIB and re-exported to another NAFTA party. Rather, the petitioners contend that while the Department is required to assess antidumping duties on NAFTA TIB entries, it should nonetheless exclude from the calculation of the dumping margin those U.S. sales that entered under a TIB and

[3] The petitioners note that they assume that ILVA is referring to the Department's margin calculations when it used the term ''assess'' in its arguments. According to the petitioners, to do otherwise would render ILVA's arguments wholly inconsistent.

were subsequently re-exported to a NAFTA party. The petitioners' positions are incongruous.

In accordance with section 733(d)(2) of the Act, the Department can only assess antidumping duties on subject merchandise entered for consumption in the United States. *See Titanium Metals Corp.* v. *United States,* 901 F. Supp. 362 (CIT 1995). Normally, TIB entries are not entered for consumption, and the Department therefore does not assess antidumping or countervailing duties on TIB entries. Consistent with its treatment on assessment of duties, the Department's practice is to exclude those sales that entered under a TIB from its margin calculation because there will be no assessment of antidumping duties on such entries. *See e.g.,* Titanium Sponge From the Republic of Kazakhstan; Notice of Preliminary Results of Antidumping Duty Administrative Review, 64 FR 48793, 48794 (September 8, 1999). By contrast, where, as here, the Department will assess antidumping duties on entries, there is no basis to exclude the relevant sales from the margin calculation. Accordingly, we have included in the margin calculation of all ILVA's U.S. sales to unaffiliated parties that were entered for consumption under Article 303(3) of the NAFTA.

Comment 7: Collapsing Affiliates and Application of the Major Input Rule

During the POI, ILVA produced slabs which it sold to its wholly owned subsidiary, ILVA Lamiere e Tubi S.p.A. (''ILT''). ILT rolled the slabs into quarto plate and sold the plate to ILVA. During the POI, ILT only sold plate to ILVA (*i.e.,* ILT did not sell plate to any one else), which resold the plate to affiliated and unaffiliated customers in the U.S. and home markets. Prior to the preliminary determination, the petitioners argued that the Department should value the slabs that ILVA sold to ILT in accordance with the major input rule of section 773(f)(3) of the Act. ILVA argued that the Department should collapse ILT and ILVA and, in doing so, not apply the major input rule. In the preliminary determination, the Department did not treat ILT as a producer of the merchandise under investigation because it only supplied one service, namely rolling, in a larger production process wherein ILVA supplied all of the other material inputs and services required to produce plate. The Department determined that there was not a significant potential for price manipulation and, thus, no basis for collapsing ILT and ILVA. Since the Department did not collapse ILT with the producer ILVA, it used the major input rule to value ILT's rolling service. For the final determination, both the petitioners and ILVA contend that the Department erred by not treating ILT as a producer of the merchandise under investigation.[4] However, the parties differ as to whether the major input rule should be applied.

According to the petitioners, the record demonstrates that ILT is a supplier and seller of plate and, thus, the Department should apply the major input rule to ILT's purchases of slab from ILVA irrespective of whether it collapses ILT with ILVA. The petitioners note that ILVA reported, and the Department verified, that ILT purchased slabs from ILVA, rolled the slabs into plates, and sold the plates to ILVA. Thus, according to the petitioners, ''there is no tolling arrangement between ILVA and ILT.'' The petitioners submit that transactions between affiliated parties should be valued under the major input rule and, thus, they urge the Department to apply this rule in the instant situation. According to the petitioners, the decision to collapse entities is a sales, not a cost, issue and, therefore, it should have no bearing on the application of the major input rule. Specifically, the petitioners maintain that the purpose behind collapsing is 1) to ensure that all sales of a producer or reseller are reviewed; 2) to ensure that antidumping margins are calculated as accurately as possible; and, 3) to prevent evasion of antidumping duty orders by the establishment of alternate sales channels (*see Queen's Flowers de Colombia et al.* v. *United States,* 981 F. Supp. 617, 622 (CIT 1997). Thus, the petitioners contend that the decision to collapse entities is made in the limited context of ensuring that the Department has included all of a respondent's U.S. sales in its margin calculation. Hence, the petitioners assert that collapsing should not affect the application of the major input rule. Because ILVA failed to provide a market price for slabs, as required by the Department for application of the major input rule, the petitioners request that as facts available, the Department value ILVA's slabs using the market price that the petitioners provided in their July 8, 1999 submission.

ILVA agrees that ILT and ILVA are both producers of the merchandise under investigation, but also contends that they satisfy the regulatory criteria for collapsing. Consequently, ILVA contends that the Department should collapse these two entities and not apply the major input rule. ILVA notes that during the POI, it produced CTL plate from plate in coil while ILT, a separate affiliated legal entity, produced another type of CTL plate, referred to as quarto plate. Based on the independent legal status of ILT, along with the fact that legal title belongs to ILT until ILT sells the plate to ILVA, ILVA maintains that the Department must find that ILT is a producer of plate and not merely a subcontractor as the Department held in its preliminary determination. ILVA believes that the Department's decision not to treat ILT as a producer of plate is wrong for the following reasons. First, ILVA reiterates that ILT cannot be considered a subcontractor because it acquires ownership of the subject merchandise. Second, ILVA argues that even if the Department considers ILT to be a ''subcontractor,'' the Department's regulations preclude it from finding that ILT is not a producer. Specifically, ILVA notes that 19 CFR 351.401(h) states the following:

> (h) *Treatment of subcontractors (''tolling'' operations).* The Secretary will not consider a toller or subcontractor to be a manufacturer or producer where the toller or subcontractor does not acquire ownership, and does not control the relevant sale of the subject merchandise or foreign like product.

Since ILT acquires ownership of the subject merchandise and both elements of 19 CFR 351.401(h) must be satisfied before a company, even if deemed a subcontractor, cannot be treated as a producer, ILVA claims that the Department must determine that ILVA is a producer.

Third, ILVA alleges that the Department reached its preliminary determination on this matter by improperly focusing on the operational relationship between ILVA and ILT rather than the legal relationship. Again, ILVA notes that the legal relationship involves ILT purchasing slabs from ILVA, holding title to those slabs, using the slabs to produce plates, and selling the plates, for which ILT also holds title, to ILVA. According to ILVA, finding that an entity is not a producer based on an ''operational reality test'' would not withstand judicial scrutiny because it conflicts with the Department's practice of focusing only on legal relationships when employing the major input rule. Specifically, ILVA notes that the Department consistently looks to the legal status of the responding parties rather than their operational relationship in determining whether the ''transactions disregarded'' and ''major input rules'' of the Act are applicable. ILVA contends that the Department

[4] Although the petitioners maintain that ILT is a producer, they did not address the issue of whether the Department should collapse ILT with ILVA.

would be hard-pressed to explain to a Court why it looks at the operational relationship between parties to determine whether an entity is a producer but refuses to look at the operational relationship when employing the major input rule. ILVA adds that this is especially so since the logical consequence of being treated as a ''subcontractor'' based on the ''operational reality test'' leads to the application of the major input rule.

Fourth, ILVA notes that its relationship with ILT is identical to the relationship that existed between two affiliated in the antidumping duty investigation of stainless steel wire rod from Sweden and yet, in that investigation, the Department found that both the affiliates were producers (*see Notice of Final Determination of Sales at Less Than fair Value: Stainless Steel Wire Rod From Sweden,* 63 FR 40449 (July 29, 1998) (*''SSWR From Sweden''*)). ILVA and ILT operate under an agreement whereby, in general, ILT must purchase from ILVA all of the slabs that it uses to produce plates and it must sell the plates that it produces only to ILVA. According to ILVA, its relationship with ILT is identical to the relationship between Fagersta and Sandvik, the two affiliates in *SSWR From Sweden,* because Sandvik, a producer of stainless steel wire rod (''SSWR'') operated under an exclusive purchase and supply agreement with Fagersta whereby Fagersta was ''required to purchase only from Sandvik the billets that it processes into SSWR for sale to Sandvik'' (*see SSWR From Sweden,* 63 FR at 40454). Unlike the Department's finding in the instant investigation, in *SSWR From Sweden,* the Department found that Fagersta was a producer. Moreover, ILVA points out that the Department's preliminary analysis on this issue, which seems to focus on the commercial relationship between ILVA and ILT as described in their exclusive supply and purchase agreement, is flawed because it does not consider certain provisions in the agreement that indicate that ILT is a separate entity that is operationally independent from ILVA. Finally, ILVA argues that the fact that ILT did not export subject merchandise to the United States does not prohibit the Department from treating ILT as a producer and collapsing the two entities. ILVA notes that in *Certain Fresh Cut Flowers From Colombia; Preliminary Results of Antidumping Duty Changed Circumstances Review,* 63 FR 25447, 25448 (May 8, 1998) (*Certain Fresh Cut Flowers From Colombia*), the Department collapsed a potential exporter that was not even producing subject merchandise during the period of review because the company had the capability of producing subject merchandise. For the foregoing reasons, ILVA urges the Department to treat ILT as a producer.[5]

Furthermore, ILVA contends that as producers, ILT and ILVA satisfy all of the regulatory criteria for collapsing. ILVA states that pursuant 19 CFR. 351.401(f), the Department will collapse two producers where the Department finds; 1) the producers are affiliated under section 771(33) of the Act; 2) the producers have production facilities for similar or identical products that would not require substantial retooling in order to restructure manufacturing priorities; and 3) there is a significant potential for the manipulation of price or production. ILVA believes that it meets all of the above criteria for the following reasons. First, ILVA notes that it owns 100 percent of ILT and, thus, ILVA and ILT are affiliated according to section 771 (33)(e) of the Act which states that an organization and any person owning 5 percent or more of the organization are affiliated. Second, ILVA maintains that it produces plates that are the same or similar to the plates produced by ILT. In fact, ILVA notes that using the Department's model-matching characteristics, there are some control numbers that include both ILVA and ILT produced plates. Hence, ILVA concludes that it meets the second of the Department's requirements for collapsing. Lastly, ILVA argues that in the instant situation, there is a significant potential for the manipulation of prices or production. According to ILVA, in order to determine whether a significant potential for manipulation exists, the Department considers; 1) the level of common ownership between the affiliates, 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. ILVA believes that it meets each of these criteria because it owns 100 percent of ILT, certain members of its board of directors are also on the board of directors of ILT, and it shares information concerning sales, production and pricing with ILT. Moreover, ILVA contends that given its exclusive purchase and supply agreement with ILT, the two companies intimately coordinate production activities and, thus, their operations are intertwined. ILVA notes that the Department found the exclusive purchase and supply agreement in *SSWR From Sweden* to be a significant factor in its determination to collapse Sandvik and Fagersta. Additionally, ILVA maintains that in the preliminary determination, the Department did not collapse ILVA and ILT because it did not consider ILT to be a producer. However, as noted above, ILVA believes that ILT is a producer and argues that the petitioners agree with that conclusion. Thus, ILVA contends that it should be collapsed with ILT.

If the Department collapses ILVA and ILT, ILVA maintains that precedent requires the Department to disregard the major input rule. *AK Steel Corp.* v. *United States,* 34 F. Supp.2d 756 (CIT 1998); *see Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews,* 63 FR 13170, 13185 (March 18, 1998); *see also Certain Cut-to-Length Carbon Steel Plate from Brazil: Final Results of Antidumping Duty Administrative Review,* 63 FR 12744, 12749–50 (March 16, 1998) In fact, ILVA notes that the Department was very specific on this point in *SSWR From Sweden* where it stated that ''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'' (*see SSWR From Sweden,* 63 FR at 40454). Given the Department's precedents, ILVA urges the Department to collapse ILVA and ILT and to disregard the major input rule.

DOC Position: We disagree with both parties. The two issues at hand are whether to collapse ILVA and ILT and whether to apply the major input rule. With respect to collapsing, section 351.401(f) of the Department's regulations describes the circumstances whereby the Department will treat two or more affiliated producers as a single entity (*i.e.,* collapse the parties). As in the preliminary determination, we do not consider ILT to be a producer because the terms of its exclusive supply and purchase agreement with ILVA require ILT to sell to ILVA all of the plate that it rolls in its facility. In arguing that ILT is a producer, the petitioners focused on the fact that

[5] ILVA also contends that the Department's decision not to collapse ILT because ILT is not a producer nullifies the ''significant potential for manipulation'' provision of the regulations. According to ILVA, ''the fact that the Department determined that ILT is not a producer because of the exclusive supply arrangement with ILVA is simply not dispositive of whether the Department should collapse ILVA.'' ILVA contends that its agreement with ILT could change whereupon ILT would sell subject merchandise and ''this is exactly the situation that the Department's collapsing regulation is intended to address.''

actual sales of slabs and plates took place between ILVA and ILT and, thus, according to the petitioners, ''there is no tolling arrangement between ILVA and ILT.'' ILVA also focused on the legal form of the transactions between ILVA and ILT, noting that ''based on the independent legal status of ILT, along with the fact that legal title [to the plates] belongs to ILT until ILT sells the merchandise to ILVA, the Department must determine that ILT is a producer.'' However, the transfer of legal title is not the only factor that the Department considers when deciding whether an entity that is involved in manufacturing subject merchandise or foreign like product is a producer (*see Notice of Final Determination of Sales of Less Than Fair value: Dynamic random Access Memory Semiconductors of One Megabit and Above,* 64 FR 56308, 56318 (October 19, 1999 (''DRAMs'' From Taiwan)). Significantly, section 351.401(h) of the Department's regulations notes that a subcontractor will not be considered to be a producer where the subcontractor ''does not acquire ownership and *does not control the pertinent sale of the subject merchandise or foreign like product.''* This provision indicates that ownership of the produced merchandise and control of the relevant sale of such merchandise are important considerations in identifying the producer. Contrary to ILVA's claim, however, it does not require the Department to consider an entity to be a producer where one of the two conditions is not satisfied. Moreover, the Department has discretion in both selecting the factors that it considers in order to identify a producer and in determining the importance of those factors. In this case, we find that control of the relevant sale, *i.e.,* the sale of subject merchandise or foreign like product to unaffiliated parties, is a particularly important characteristic for the producer to possess. Under the terms of the exclusive supply and purchase agreement, ILT does not sell plates to unaffiliated parties and, thus, does not control the relevant sale (*i.e.,* the sale to an unaffiliated party). Rather, ILVA controls the first sale of the plates to unaffiliated parties. In essence, ILT only performs a rolling service for ILVA, obtaining slab from ILVA and returning the finished plate to ILVA. Thus, we do not consider ILT to be a producer of subject merchandise. Therefore, because ILT is not a producer, it is not appropriate to collapse ILVA and ILT into one entity under 19 CFR 351.401(f) for purposes of this final determination. Furthermore, there is no other basis on which to collapse ILVA and ILT.

The cases cited by ILVA as support for treating ILT as a producer differ from the instant case with respect to control of the relevant sale. In those cases, there is no indication that the parties which the Department treated as producers were contractually precluded from selling subject merchandise or foreign like product to unaffiliated customers. In fact, in *SSWR From Sweden,* each of the parties which the Department identified as producers and subsequently collapsed sold subject merchandise to the United States during the POI. In the preliminary results of the changed circumstances review in *Certain Fresh Cut Flowers From Colombia,* the Department collapsed Flores El Talle S.A. (''Flores''), the party that requested the review, with the Flores Colombianas Group (''the Group''), and found that the revocation of the antidumping order with respect to the Group also applied to Flores. In that case the Department noted that Flores' shipments would not be subject to suspension of liquidation if it were collapsed with the Group. Thus, unlike ILT, Flores, although not currently producing the subject merchandise due to soil infestation, was a producer of subject merchandise in a position to sell subject merchandise and foreign like product to unaffiliated customers once it resumed production. Thus, the fact that the Department treated Flores as a producer is not inconsistent with the Department's treatment of ILT in the instant case.

Furthermore, we do not find that the provisions which ILVA pointed to in the exclusive supply and purchase agreement sufficiently mitigate the restrictions that the agreement places on ILT's ability to sell plates. The agreement is clear that in the ordinary course of business, control of the relevant sale belongs to ILVA, and, in fact, during the POI, it was ILVA, not ILT, that sold plates to unaffiliated parties.

Finally, we disagree with ILVA's contention that the Department's decision not to collapse ILVA and ILT nullifies the ''significant potential for manipulation'' provision of section 351.401(f) of the Department's regulations. As the Department has noted, it ''does not collapse affiliated companies for margin-calculation purposes unless both companies produce or sell the subject merchandise since the Department collapses affiliated companies only where the potential for price manipulation exists'' (*see Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Certain Pasta From Italy,* 64 FR 6615, 6628 (February 10, 1999)). Thus, rather than nullifying the ''significant potential for manipulation'' provision, in making our decision we have specifically considered whether such potential exists by examining the role that ILVA and ILT played in manufacturing and selling the merchandise under investigation. Moreover, the fact that ILVA and ILT can alter their agreement and change the role that each plays in manufacturing and selling the merchandise under investigation has not escaped our attention. Should we issue an order with respect to ILVA, we intend to revisit this issue if the relationship between ILVA and ILT should change in any future administrative review.

Because we have not collapsed ILVA and ILT and we treated ILVA as the producer, we have continued to apply the major input rule to value the rolling services provided by ILT. In the absence of a market price or a transfer price for rolling slabs, as in the preliminary determination, we constructed a transfer price by increasing the reported rolling costs for quarto plate by ILT's G&A expenses and profit.

Palini

Comment 1: Classification of Warranty Expenses

The petitioners contend that Palini improperly classified as indirect selling expenses the U.S. credit notes issued by Palini pursuant to warranty claims made by U.S. customers. The petitioners argue, citing *Zenith Electronics Corporation* v. *United States,* that the Department's regulations allow for the classification of warranty expenses as indirect selling expenses only where the warranty expenses relate to non-variable costs. 77 F.3d 426, 433–34 (Fed. Cir. 1996). In contrast, in this case, the petitioners assert that Palini's warranty expenses are variable expenses, because the credit notes were issued for defective and non-conforming merchandise and therefore directly relate to specific sales. Therefore, the petitioners request that, for the final results, the Department treat Palini's warranty expenses as direct selling expenses.

Palini claims that it properly reported its warranty expenses as indirect selling expenses. Palini contends that, according to *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 (TRB's from Japan),* the Department recognizes that period of review (''POR'') warranty expenses cannot always be linked to POR sales, because the expenses may result from sales that occurred before the POR. 62 FR 11825 (March 13, 1997). Therefore, Palini asserts that its reported warranty expenses must be allocated because the expenses cannot be reported on a transaction-specific basis. *Id.* Further, in accordance with *TRB's from Japan,* Palini contends that warranty expenses may be classified as indirect selling expenses, when the expenses cannot be reported on a transaction-specific basis. Therefore, for the final results, Palini requests that, because it issued credit notes on a customer-specific basis, as opposed to a transaction-specific basis, the Department should treat its warranty expenses as indirect selling expenses. However, Palini notes, if the Department were to reclassify the company's U.S. warranty expenses as direct selling expenses, it should similarly treat its home market warranty expenses, because the expenses are incurred in the same manner in both markets.

DOC Position: We agree with the petitioners and have treated Palini's warranty expenses as a direct expense in both the U.S. and home markets. Section 351.410 of the Department's regulations states that direct selling expenses are expenses, such as warranties, that result from, and bear a direct relationship to, the particular sale in question. In this case, Palini stated, at verification, that it issued credit notes for customer claims concerning defective or non-conforming merchandise. Thus, these expenses arise directly from the sales of subject merchandise and, consequently, pursuant to section 351.410 of the Department's regulations, we find that Palini's issuance of credit notes relates directly to specific sales.[6]

However, we agree with Palini that to the extent we reclassify its warranty expenses as direct selling expenses in the U.S. market, we should also do so in the home market because evidence on the record indicates that such expenses were incurred in the same manner in both markets. Therefore, for these final results, we have determined that Palini's warranty expenses should be treated as direct selling expenses for both the home and U.S. markets.

Comment 2: Minor Corrections

The petitioners contend that Palini's submission of its revised U.S. warranty expense, presented as a minor correction at the beginning of verification, should not be accepted as such by the Department. The petitioners argue that the amount of the reduction from the reported value to the value presented at verification, was such a substantial change that it should be rejected by the Department as an untimely submission of new factual information.

In response, Palini asserts that its revision to U.S. warranty expenses was properly submitted as part of the minor corrections presented at the beginning of verification, pursuant to Department practice, and should be accepted as such by the Department.

DOC Position: We agree with Palini. During our verification of Palini, we examined and traced selected credit notes to Palini's financial records and completed an overall financial reconciliation, which substantiated the validity of Palini's U.S. warranty expense revision. Following Department practice, because the corrections are limited to U.S. warranty expenses and were verified to our satisfaction, we accepted these corrections for purposes of the final results.

Comment 3: Early Payment Discounts

The petitioners argue that Palini did not substantiate its claim that all customers who were offered an early payment discount actually made an early payment. The petitioners assert that pursuant to section 351.308 of the regulations, the Department should disallow all home market early payment discounts as facts available because Palini failed to provide information that distinguished between sales where the discount was granted and sales where the discount was not granted.

Palini argues that its reported early payment discounts were properly treated as a price adjustment in the preliminary determination. Palini states the Department affirmatively verified that when an early payment discount is granted, the amount of the discount is indicated in the invoice price. Therefore, Palini argues that the Department should not apply facts available to its early payment discount, but should treat it as a price adjustment to NV in the final results.

DOC Position: We agree with Palini. During our home market verification of Palini, we conducted thorough sales traces which included ensuring the accuracy of Palini's early payment discounts through an examination of the reported gross unit price and the invoice price. We found no discrepancies. Furthermore, we were satisfied that for those sales transactions reviewed at verification, which included early payment discounts, the customer did utilize the early payment option whenever offered by Palini. Therefore, for these final results, we have continued to allow an adjustment to NV for Palini's reported early payment discounts.

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 subject merchandise from Italy that were entered, or withdrawn from warehouse, for consumption on or after July 29, 1999 (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
Palini B Bertoli S.p.A	8.97
Ilva S.p.A	de minimis
All others	8.97

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our determination. Because our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the 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 issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

[6] We note, as stated in the *Antidumping Manual, Chapter 8, page 17,* and in accordance with Department practice, that ''warranties are included even though the expense can not be tied to a particular sale because of the lapse of time between sale and expense. Yet it is inescapable that had there been no sales, there would have been no warranty expense.''

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33236 Filed 12–28–99; 8:45 am]

BILLING CODE 3510–DS–D

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–827]

Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From Italy

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

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Norbert Gannon, Kristen Johnson, or Michael Grossman, Office of CVD/AD Enforcement II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2786.

Final Determination. The Department of Commerce (the Department) determines that countervailable subsidies are being provided to certain producers and exporters of certain cut-to-length carbon-quality steel plate from Italy. For information on the countervailing duty rates, please see the ''Suspension of Liquidation'' section of this notice.

SUPPLEMENTARY INFORMATION:

Petitioners

The petition in this investigation was filed by Bethlehem Steel Corporation, U.S. Steel Group, a Unit of USX Corporation, Gulf States, Inc., IPSCO Steel Inc., and the United Steelworkers of America (the petitioners).

Case History

Since the publication of our preliminary determination in this investigation (*Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from Italy,* 64 FR 40416 (July 26, 1999) (*Preliminary Determination*)), the following events have occurred:

We issued supplemental questionnaires on July 23, 26, and 27, 1999, to ILVA S.p.A. (ILVA) and ILVA Lamiere e Tubi S.p.A. (ILT) (collectively referred to as ILVA/ILT), Palini & Bertoli S.p.A. (Palini & Bertoli), and the Government of Italy (GOI), respectively. We received the respondents' questionnaire responses on September 3, 1999. We conducted verification of the countervailing duty questionnaire responses from September 13 through September 24, 1999. Because the final determination of this countervailing duty investigation was aligned with the final antidumping duty determination (*see* 64 FR at 40416), and the final antidumping duty determination was postponed (*see* 64 FR at 46341), the Department on August 25, 1999, extended the final determination of this countervailing duty investigation until no later than December 13, 1999 (*see* 64 FR at 46341). On November 8, 1999, we issued to all parties the verification reports for ILVA/ILT, Palini & Bertoli, and the regional government of Friuli Venezia Giulia. On November 12, 1999, we issued the verification report for the GOI. Petitioners, the GOI, and ILVA/ILT filed case briefs on November 18, 1999. Rebuttal briefs were submitted to the Department by the petitioners and ILVA/ILT on November 23, 1999. The case hearing was held on November 30, 1999.

Scope of Investigation

The products covered by this scope are certain hot-rolled carbon-quality steel: (1) universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils).

Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.,* USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1998) and to the substantive countervailing duty regulations published in the **Federal Register** on November 25, 1998 (63 FR 65348) (CVD Regulations).

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 April 8, 1999, the ITC published its preliminary determination 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 (*see Certain Cut-to-Length Steel Plate From the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia; Determinations,* 64 FR 17198 (April 8, 1999)).

Period of Investigation

The period of investigation for which we are measuring subsidies (the POI) is calendar year 1998.

Corporate History of ILVA/ ILT [1]

Prior to 1981, the Italian government holding company Istituto per la Ricostruzione Industriale (IRI), controlled Italy's nationalized steel industry through its wholly-owned subsidiary, Finsider S.p.A (Finsider). The steel operations of Finsider were subdivided into three main companies: Italsider (carbon steel); Terni (stainless and special steel); and Dalmine (pipe and tube). Italsider was the sector leader and the primary producer of the subject merchandise. In 1981, the GOI implemented a restructuring plan, restructuring Finsider into several operating companies including: Nuova Italsider (carbon steel flat products); Terni (speciality flat steels); Nuova Sias (special long products); and other steel product divisions. In the course of the 1981 Restructuring Plan, Italsider transferred all of its assets, with the exception of certain plants, to Nuova Italsider. Italsider became a one-company holding company with Nuova Italsider's stock as its primary asset.

During 1987, Finsider restructured three of its main operating companies: Nuova Italsider, Deltasider, and Terni. Nuova Italsider spun-off its assets to Italsider and transferred its shares in Italsider to Finsider. Nuova Italsider ceased operations after this divestment and Finsider had direct ownership of Italsider. Upon completion of the 1987 restructuring, Italsider re-emerged as the steel sector's carbon steel products producer.

Later in 1987, Finsider and its main operating companies (Italsider, TAS, and Nuova Deltasider) were placed in liquidation, and the GOI subsequently implemented the 1988 Restructuring Plan. The goal of the 1988 Restructuring Plan was to restructure Finsider and its operating companies, assembling the group's most productive assets into a new operating company, ILVA S.p.A. (ILVA S.p.A. or (old) ILVA), which was created on January 1, 1989. The 1988 Restructuring Plan, like the 1981 plan, was submitted to and approved by the European Commission (EC). In accordance with the plan, ILVA S.p.A. took over some of the assets and liabilities of the liquidating companies, and Finsider closed certain facilities to comply with the EC's requirements. With respect to Italsider, part of the company's liabilities and the majority of its viable assets, including assets associated with the production of carbon steel flat-rolled products, were transferred to ILVA S.p.A., which commenced production on January 1, 1989. Non-productive assets and a substantial amount of liabilities were left behind with Finsider and the liquidating operating companies.

The facilities retained by ILVA S.p.A were organized into four primary operating groups: carbon steel flat products, stainless steel flat products, stainless steel long products, and seamless pipe and tube. In 1992, ILVA Lamiere e Tubi (ILT), a carbon steel flat products operation, was created as a wholly-owned subsidiary of ILVA S.p.A. ILVA S.p.A. was also the majority owner of a large number of separately incorporated subsidiaries. Some of these subsidiaries produced various types of steel products. The other subsidiaries were service centers, trading companies, and an electric power company, among others. ILVA S.p.A., together with its subsidiaries, constituted the ILVA Group. The ILVA Group was wholly-owned by IRI.

Although ILVA S.p.A. was profitable in 1989 and 1990, the company encountered financial difficulties in 1991, and became insolvent by 1993. On October 31, 1993, ILVA S.p.A. entered into liquidation. On December 31, 1993, IRI demerged ILVA S.p.A.''s main productive assets and a share of its liabilities into two new companies: ILVA Laminati Piani (ILP) (carbon steel flat products) and Acciai Speciali Terni (AST) (speciality and stainless steel flat products). On January 1, 1994, ILP and AST were formally established as separately incorporated firms in advance of privatization. *See Memorandum to David Mueller: Verification Report for ILVA S.p.A. and ILVA Lamiere e Tubi,* dated November 8, 1999 (public version on file in the Central Records Unit (CRU) (Room B–099 of the Main Commerce Building) *(ILVA/ILT Verification Report)*, at Exhibit 1993/94–1 and *Memorandum to David Mueller: Verification Report for the Government of Italy,* dated November 12, 1999 (public version on file in the CRU) *(GOI Verification Report)* at 11. ILT, the carbon flat steel products operation, was transferred to ILP as its wholly-owned subsidiary. The remainder of ILVA S.p.A.''s assets and existing liabilities, along with much of the redundant workforce, was placed in ILVA Residua (a.k.a., ILVA in Liquidation).

In 1995, 100 percent of ILP was sold through a competitive public tender managed by IRI with the assistance of Istituto Mobiliare Italiano (IMI). The sale of ILP was executed through a share purchase agreement between IRI and a consortium of investors led by Riva Acciaio S.p.A. (RIVA) and investment companies. The contract of sale was signed on March 16, 1995, and all shares of ILP were transferred to the consortium on April 28, 1995. As of that date, the GOI no longer maintained any ownership interest in ILP or had any ownership interest in any of ILP's new owners.

On January 1, 1997, RIVA changed the name of ILP to ILVA S.p.A (creating the ''new'' ILVA, referred to hereafter as ILVA or (new) ILVA). ILVA continues to wholly-own ILT. Within RIVA's corporate structure, ILT, at its Taranto Works facility, produces the subject merchandise, which is exported to the United States. ILVA, with the assistance of ILVA Commerciale S.p.A. (ICO), a sales company wholly-owned by ILVA, is responsible for selling and exporting the subject merchandise to the United States and other markets.

[1] As discussed in this section, ILVA/ILT's carbon steel predecessor companies are: Nuova Italsider (1981–1987), Italsider (1987–1988), ILVA S.p.A. (1989–1993), and ILP (1994–1996).

As of 1998, RIVA owns and/or controls 82.0 percent of ILVA and two foreign-incorporated investment companies own the remaining 18.0 percent.

According to ILVA/ILT, Sidercomit Taranto C.S. Lamiere S.r.l. (Sidercomit) was created in 1992, as an indirect subsidiary of (old) ILVA. Sidercomit became an operating unit within (new) ILVA in 1997, and currently operates service centers for the distribution of merchandise, including the subject merchandise for ILVA/ILT. Any benefits to Sidercomit under programs that have been found countervailable have been mentioned separately within those program sections below.

Corporate History of Palini & Bertoli

Palini & Bertoli, a 100 percent privately-owned corporation, was incorporated in December 1963. Palini & Bertoli has never been part of the Italian state-owned steel industry.

Change in Ownership

In the General Issues Appendix (GIA), appended to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria,* 58 FR 37217, 37226 (July 9, 1993) (*Certain Steel from Austria*), we outlined our methodology for the treatment of subsidies received prior to the sale of a government-owned company to a private entity (*i.e.,* privatization), or the spinning-off (*i.e.,* sale) of a productive unit from a government-owned company to a private entity.

Under this methodology, we estimate the portion of the purchase price attributable to prior subsidies. We do this by first dividing the sold company's subsidies by the company's net worth for each year during the period beginning with the earliest point at which non-recurring subsidies would be attributable to the POI and ending one year prior to the sale of the company. We then take the simple average of these ratios. This averaged ratio serves as a reasonable estimate of the percent that subsidies constitute of the overall value of the company. Next, we multiply this ratio by the purchase price to derive the portion of the purchase price attributable to the payment of prior subsidies. Finally, we reduce the benefit streams of the prior subsidies by the ratio of the repayment amount to the net present value of all remaining benefits at the time the company is sold.

With respect to the spin-off of a productive unit, consistent with the Department's methodology set out above, we analyze the sale of a productive unit to determine what portion of the sales price of the productive unit can be attributable to the repayment of prior subsidies. To perform this calculation, we first determine the amount of the seller's subsidies that the spun-off productive unit could potentially take with it. To calculate this amount, we divide the value of the assets of the spun-off unit by the value of the assets of the company selling the unit. We then apply this ratio to the net present value of the seller's remaining subsidies. The result of this calculation yields the amount of remaining subsidies attributable to the spun-off productive unit. We next estimate the portion of the purchase price going towards repayment of prior subsidies in accordance with the methodology set out above, and deduct it from the maximum amount of subsidies that could be attributable to the spun-off productive unit.

Use of Facts Available

Both the GOI and ILVA/ILT failed to fully respond to the Department's questionnaires concerning the program ''Debt Forgiveness: 1981 Restructuring Plan.'' Section 776(a)(2) of the Act requires the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. In such cases, the Department must use the facts otherwise available in reaching the applicable determination. Because the GOI and ILVA/ILT failed to submit the information that was specifically requested by the Department, we find that the respondents have failed to cooperate to the best of their abilities. Therefore, we have based our determination for this program on the facts available.

In accordance with section 776(b) of the Act, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available when the party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such adverse inference may include reliance on information derived from (1) the petition; (2) a final determination in a countervailing duty or an antidumping investigation; (3) any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or (4) any other information placed on the record. *See* 19 CFR 351.308(c). In the absence of information from the GOI and ILVA/ILT, we consider the February 16, 1999 petition, as well as our findings from the final determination of *Certain Steel from Italy* to be appropriate bases for a facts available countervailing duty rate calculation. *See Final Affirmative Countervailing Duty Determination: Certain Steel Products from Italy,* 58 FR 37327, 37329–30 (July 9, 1993) (*Certain Steel from Italy*).

The Statement of Administrative Action accompanying the URAA clarifies that information from the petition and prior segments of the proceeding is ''secondary information.'' *See* Statement of Administrative Action, accompanying H.R. 5110 (H.R. Doc. No. 103–316) (1994) (SAA), at 870. If the Department relies on secondary information as facts available, section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate such information using independent sources reasonably at its disposal. The SAA further provides that to corroborate secondary information means simply that the Department will satisfy itself that the secondary information to be used has probative value. However, where corroboration is not practicable, the Department may use uncorroborated information. With respect to the program for which we did not receive complete information from the respondents, the secondary information was corroborated through exhibits (*i.e.,* financial statements) attached to the petition. The financial transactions discussed within Finsider's 1984 and 1985 financial statements confirm that the GOI engaged in transactions which are tantamount to the assumption of debt and debt forgiveness. Based on such review of the transactions discussed in the financial statements, we find that the secondary information (*i.e.,* the petition and *Certain Steel from Italy*) has probative value and, therefore, the information regarding the debt forgiveness provided under the 1981 Restructuring Plan has been corroborated.

Subsidies Valuation Information

Allocation

Section 351.524(d)(2) of the CVD Regulations states that we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System and updated by the Department of Treasury. The presumption will apply unless a party claims, and establishes that, these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation, and the party can establish that the difference between the company-specific or country-wide AUL for the industry under investigation is significant.

On June 21, 1999, ILVA/ILT submitted to the Department four tables illustrating company-specific AUL calculations for (old) ILVA, ILP, ILT, and (new) ILVA, both separately and in combination. In addition, the GOI provided estimates of the country-wide AUL for the Italian steel industry. Based upon our analysis of the data submitted by ILVA/ILT regarding the AUL of their assets, we preliminarily determined that the calculation which takes into consideration all producers of the subject merchandise over the past 10 years is the most appropriate AUL calculation. However, because this calculation did not yield a company-specific AUL which is significantly different from the AUL listed in the IRS tables, in the *Preliminary Determination,* we used the 15 year AUL as reported in the IRS tables to allocate non-recurring subsidies under investigation for ILVA/ILT in the preliminary calculations.

After considering the parties' comments and verifying the data submitted by ILVA/ILT regarding the AUL of their assets, we continue to use a 15 year AUL for ILVA/ILT. We have rejected respondents company-specific AUL calculation and the country-wide depreciation information provided by the GOI and are using the IRS tables pursuant to 19 CFR 351.524(d)(2)(i). For an explanation of why we are rejecting ILVA/ILT's company-specific AUL and the country-wide depreciation information, see *Comment 2.*

In its questionnaire response of July 6, 1999, Palini & Bertoli stated that it ''does not have sufficient resources to respond'' to the Department's inquiry of whether the company wished to rebut the 15 year AUL as reported in the IRS tables. Therefore, we are using a 15 year AUL for Palini & Bertoli.

Equityworthiness

In measuring the benefit from a government equity infusion, in accordance with section 351.507(a)(2) of the Department's CVD Regulations, the Department compares the price paid by the government for the equity to actual private investor prices, if such prices exist. According to section 351.507(a)(3) of the Department's CVD Regulations, where actual private investor prices are unavailable, the Department will determine whether the firm was unequityworthy at the time of the equity infusion.

In this case, private investor prices are unavailable; therefore, it is necessary to determine whether ILVA/ILT's predecessor companies were unequityworthy in the years in which equity infusions were made. Our review of the record has not led us to change our findings from prior investigations, in which we found ILVA/ILT's predecessor companies, Nuova Italsider and (old) ILVA, unequityworthy from 1984 through 1988, and from 1991 through 1992. *See, e.g.,Certain Steel from Italy,* 58 FR 37328; *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy,* 63 FR 40474, 40477 (July 29, 1998) *(Wire Rod from Italy); Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Italy,* 64 FR 15508, 15511 (March 31, 1999) (*Plate in Coils from Italy*) and *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from Italy,* 64 FR 30624, 30627 (June 8, 1999) *(Sheet and Strip from Italy).* We have not examined whether (old) ILVA was equityworthy in 1989 and 1990, because the company did not receive an equity infusion from the GOI in either of those years.

Section 351.507(a)(3) of the Department's CVD Regulations views an infusion of equity into an unequityworthy company as inconsistent with the usual investment practices of private investors. In such cases, the Department will apply the methodology described in section 351.507(a)(6) of the regulations, treating the equity infusion as a grant. Use of the grant methodology for equity infusions into an unequityworthy company is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the year in which the infusion was received based on the available information.

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), and *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela,* 62 FR 55014 (October 21, 1997). The Department will consider a firm to be uncreditworthy if it is determined that, based on information available at the time of the government-provided loan, the firm could not have obtained a long-term loan from conventional sources. *See* section 351.505(a)(4)(i) of the CVD Regulations.

Italsider, Nuova Italsider, and (old) ILVA were found to be uncreditworthy from 1977 through 1993. *See Certain Steel from Italy,* 58 FR at 37328–29, *Wire Rod from Italy,* 63 FR at 40477, and *Sheet and Strip from Italy,* 64 FR at 30627. In its September 3, 1999 response, ILVA/ILT stated that the Department has incorrectly determined that Finsider and (old) ILVA were uncreditworthy, since these companies were able to borrow money from commercial lenders at prevailing market rates of interest. ILVA/ILT discussed the existence of IRI guarantees as the reason why both Finsider and (old) ILVA were able to obtain loans at commercial interest rates. *See* ILVA/ILT's September 3, 1999 Questionnaire Response (QR), at 12–13.

We disagree with respondents. The existence of commercial loans to a government-owned company is not dispositive for purposes of determining the company's creditworthiness. In the preamble to the CVD Regulations, we state that for government-owned firms, the Department will make its creditworthiness determination by examining those factors listed in paragraph (a)(4)(i) of section 351.505. *See* Preamble to the CVD Regulations, 63 FR at 65367. Those factors outlined in paragraph (a)(4)(i) include, among other things: (1) the receipt by the firm of comparable, commercial financing, (2) the present and past financial health of the firm as indicated by various financial indicators, (3) the firm's past and present ability to meet its costs and fixed financial obligations with its cash flow, and (4) evidence of the firm's future financial position.

No information with respect to the above factors has been presented in this investigation that would lead us to reconsider our earlier findings that Italsider, Nuova Italsider, and (old) ILVA were uncreditworthy from 1977 through 1993. Therefore, consistent with our past practice, we continue to find Italsider, Nuova Italsider, and (old) ILVA uncreditworthy from 1977 through 1993.

We have not analyzed ILP's, (new) ILVA's, or ILT's creditworthiness in the years 1994 through 1998, because the companies did not negotiate new loans with the GOI or EC during these years.

Benchmarks for Long-Term Loans and Discount Rates

In the *Preliminary Determination,* we based our discount rates on the Italian

Bankers' Association (ABI) rates, which was consistent with the Department's finding in *Wire Rod from Italy,* 63 FR at 40477 and *Sheet and Strip from Italy,* 64 FR at 30626–30627. However, at verification, we learned that the ABI rate does not represent a long-term interest rate, but is rather an average of the short-term interest rates commercial banks charge to their most favored customers. A Bank of Italy (BOI) official explained at verification that an overdraft loan is the most wide-spread short-term instrument of financing available in Italy for companies and individuals. There is no set maturity on an overdraft loan and a company or individual repays the principal when the banks call in the loans. The Italian Bankers Association averages the banks' short-term interest rates to arrive at the ABI rate which the BOI publishes in its economic bulletins and annual reports. *See GOI Verification Report,* at 3–4.

At verification, we inquired whether the BOI collects data on long-term interest rates charged by commercial banks. We learned that only recently (i.e., beginning with financial year 1995) has the BOI started to compile statistics on long-term interest rates charged by banks. The only long-term interest rate for which the BOI has historical yearly information is the rate charged on treasury bonds issued by the GOI. *See Id.*

Because we were unable to gather information on commercial long-term interest rates from either the BOI or independent research for the period 1984 through 1998, and the government bond rate does not represent a commercial rate, for purposes of this final determination, we have continued to use the ABI rates to construct discount rates. We note that, in *Wire Rod from Italy,* the ABI rate was said to be ''the most suitable benchmark for long-term financing to Italian companies.'' *See Memorandum to Barbara Tillman re: Countervailing Duty Investigation of Certain Stainless Steel Wire Rod from Italy: Discussions with Company Officials from Gabetti per L'impresa, Banca Di Roma, and Reconta Ernst & Young,* dated June 3, 1998 (public document on file in CRU).

In calculating the interest rate applicable to a borrower, commercial banks typically add a spread ranging from 0.55 percent to 4.0 percent, which is determined by the company's financial health. *See Wire Rod from Italy,* 63 FR at 40477. Additionally, information on the record indicates that the published ABI rates do not include amounts for fees, commissions, and other borrowing expenses. While we do not have information on the expenses that would be applied to long-term commercial loans, the GOI supplied information on the borrowing expenses for overdraft loans in 1997, as an approximation of the expenses on long-term commercial loans. This information shows that expenses on overdraft loans range from 6.0 to 11.0 percent of interest charged. Such expenses, along with the applied spread, raise the effective interest rate that a company would pay. Because it is the Department's practice to use effective interest rates, where possible, we are including an amount for these expenses in the calculation of our effective benchmark rates. *See* section 351.505(a)(1) of the CVD Regulations. Therefore, we have added the average of the spread (*i.e.,* 2.28 percent) and borrowing expenses (*i.e.,* 8.5 percent of the interest charged) to the yearly ABI rates to calculate the effective discount rates.

For the years in which ILVA/ILT or their predecessor companies were uncreditworthy (*see* ''Creditworthiness'' section above), we calculated discount rates in accordance with the formula for constructing a long-term benchmark interest rate for uncreditworthy companies as stated in section 351.505 (a)(3)(iii) of the CVD Regulations. This formula requires values for the probability of default by uncreditworthy and creditworthy companies. For the probability of default by an uncreditworthy company, we relied on the weighted-average cumulative default rates reported for the Caa to C-rated category of companies as published in Moody's Investors Service, ''Historical Default Rates of Corporate Bond Issuers, 1920–1997'' (February 1998).[2] For the probability of default by a creditworthy company, we used the weighted-average cumulative default rates reported for the Aaa to Baa-rated categories of companies in the study. The weighted-average cumulative default rates for the Aaa to Baa-rated categories is indicated as the ''Investment Grade'' default rates. *See Memorandum to the File: Moody's Investment Grade Default Rates,* dated November 9, 1999 (public document on file in the CRU). For non-recurring subsidies, the average cumulative default rates for both uncreditworthy and creditworthy companies were based on a 15 year term, since all of ILVA/ILT's allocable subsidies were based on this allocation period.

In addition, ILVA/ILT had two long-term, fixed-rate loans under ECSC Article 54 outstanding during the POI. Therefore, we have selected a U.S. dollar-based interest rate as our benchmark. *See* section 351.505(a)(2)(i) of the CVD Regulations. Consistent with the *Preliminary Determination,* we have used as our benchmark the average yield to maturity on selected long-term corporate bonds as reported by the U.S. Federal Reserve, since both of these loans were denominated in U.S. dollars. We have used these rates since we were unable to obtain at verification or through independent research, a long-term borrowing rate for loans denominated in U.S. dollars in Italy. Because ILVA was uncreditworthy in the years in which the loans were contracted, we calculated the uncreditworthy benchmark rates in accordance with section 351.505 (a)(3)(iii) of the CVD Regulations.

I. Programs Determined To Be Countervailable

Government of Italy Programs

A. Equity Infusions to Nuova Italsider and (Old) ILVA[3]

The GOI, through IRI, provided new equity capital to Nuova Italsider or (old) ILVA, two predecessor companies of ILVA/ILT that produced carbon steel plate, in every year from 1984 through 1992, except in 1987, 1989, and 1990. We determine that these equity infusions constitute countervailable subsidies within the meaning of section 771(5)(B)(i) of the Act. These equity infusions constitute financial contributions, as described in section 771(5)(D)(i) of the Act. Because they were not consistent with the usual investment practices of private investors (*see* ''Equityworthiness'' section above), the equity infusions confer a benefit within the meaning of section 771(5)(E)(i) of the Act. Because these equity infusions were limited to Finsider and its operating companies, Nuova Italsider and (old) ILVA, we determine that they are specific within the meaning of section 771(5A)(D)(iii) of the Act.

We have treated these equity infusions as non-recurring subsidies given in the year each infusion was received because each required a separate authorization. We allocated the equity infusions over a 15 year AUL.

[2] We note that since publication of the CVD Regulations, Moody's Investors Service no longer reports default rates for Caa to C-rated category of companies. Therefore, for the calculation of uncreditworthy interest rates, we will continue to rely on the default rates as reported in Moody's Investors Service's publication dated February 1998 (at Exhibit 28).

[3] In the *Initiation Notice,* these equity infusions were separately listed as ''Equity Infusions into Italsider/Nuova Italsider'' and ''Equity Infusions into ILVA.''

Because Nuova Italsider and (old) ILVA were uncreditworthy in the years the equity infusions were received, we constructed uncreditworthy discount rates to allocate the benefits over time. *See* ''Subsidies Valuation Information'' section, above. We noted, and petitioners discussed in their November 18, 1999 case brief, that a ministerial error was made in the *Preliminary Determination* with respect to the 1986 equity infusion Nuova Italsider received from IRI. *See* Petitioners' November 18, 1999 Case Brief, at 48. The error was numerical and was insufficient to require a ministerial error correction of the preliminary calculations. For this final determination, we have corrected the error.

For equity infusions originally provided to Nuova Italsider, a predecessor company that produced carbon steel plate, we consider these equity infusions to be attributable to (old) ILVA and subsequently to ILP, because they are simply restructured entities of the government-owned steel company. Accordingly, we did not apportion to the other operations of (old) ILVA any part of the equity infusions originally provided directly to Nuova Italsider. While we acknowledge that it would be our preference to look at equity infusions into (old) ILVA as a whole and then apportion an amount to ILP when it was spun-off from (old) ILVA, we find our approach in this case to be the most feasible since information on equity infusions provided to the non-carbon steel operations of (old) ILVA is not available. For the equity infusions to (old) ILVA, however, we did apportion these by asset value to all (old) ILVA operations in determining the amount applicable to ILP.

We applied the repayment portion of our change in ownership methodology to all of the equity infusions described above to determine the subsidy allocable to ILP after its privatization. We divided this amount by ILVA's total sales[4] during the POI. On this basis, we determine the net countervailable subsidy to be 3.07 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not receive any equity infusions from the GOI.

B. Debt Forgiveness: 1981 Restructuring Plan

The GOI reported that the objective of the 1981 Restructuring Plan was to redress the economic and financial difficulties the iron and steel industry was realizing in the early 1980's. The GOI stated that this plan, which extended to 1985, due to the prolonged crisis within the sector, envisaged financial interventions to aid in the recovery of the Finsider group. As discussed above in the ''Use of Facts Available'' section, the GOI and ILVA/ILT failed to submit complete information in regard to the assistance provided under the 1981 Restructuring Plan. Therefore, based on the facts available, we determine that certain financial transactions conducted in association with the 1981 Restructuring Plan are countervailable subsidies.

Following Italsider's transfer of all its company facilities to Nuova Italsider in September 1981, Italsider held 99.99 percent of Nuova Italsider's shares. In 1983, Italsider was placed in liquidation. While in liquidation, Italsider sold its shares of Nuova Italsider to Finsider in December 1984. The sales price was 714.6 billion lire. As part of this payment, Finsider assumed Italsider's debts owed to IRI of 696.4 billion lire. The difference between the 714.6 billion lire and 696.4 billion lire was paid directly by Finsider to Italsider.

On December 31, 1984, Finsider also granted to Italsider a non-interest bearing loan of 563.5 billion lire to cover losses realized from the liquidation. A matching provision was also made to Finsider's ''Reserve for Losses on Investments and Securities,'' to cover the losses of the liquidation of Italsider. Following a shareholders' meeting of Finsider on December 30, 1985, the amount of 563.5 billion lire was disbursed to cover the losses of Italsider and Italsider's state of liquidation was revoked.

In *Certain Steel from Italy*, the Department determined that the 1981 Restructuring Plan merely shifted assets and debts within a family of companies, all of which were owned by Finsider, and ultimately, by the GOI. Therefore, we determined that both the 696.4 billion lire assumption of debt and the 563.5 billion lire debt forgiveness were specifically limited to the steel companies and constitute countervailable subsidies. *See Certain Steel from Italy*, 58 FR at 37330. No new factual information or evidence of changed circumstances has been provided to the Department in this instant investigation to warrant a reconsideration of the earlier finding that the debt assumption and debt forgiveness are countervailable subsidies. Therefore, consistent with our treatment of these transactions in *Certain Steel from Italy*, we determine that the 1984 assumption of debt and 1985 debt forgiveness constitute countervailable subsidies within the meaning of section 771(5)(B)(i) of the Act. In accordance with *Certain Steel from Italy*, debt assumption and debt forgiveness are treated as grants which constitute financial contributions under section 771(5)(D)(i) of the Act. The transactions also confer benefits to the recipient within the meaning of section 771(5)(E)(i) of the Act, in the amount of the debt coverage. Because the debt assumption and debt forgiveness were limited to Italsider, one of ILVA/ILT's predecessor companies, we determine that these transactions are specific within the meaning of section 771(5A)(D)(iii) of the Act.

To calculate the benefit, we have treated the assumption of debt and debt forgiveness to Italsider as non-recurring subsidies because each transaction was a one-time, extraordinary event. We allocated the 1984 debt assumption and 1985 debt forgiveness over a 15 year AUL. *See* the ''Allocation Period'' section, above. In our grant formula, we used constructed uncreditworthy discount rates based on our determination that Italsider was uncreditworthy in 1984 and 1985. *See* ''Benchmark for Long-Term Loans and Discount Rates'' and ''Creditworthiness'' sections, above.

As with the equity infusions originally provided to Nuova Italsider, we consider the assumption of debt and debt forgiveness to be attributable to (old) ILVA and subsequently to ILP, because they are simply restructured entities of the government-owned steel company. To determine the amount appropriately allocated to ILP after its privatization, we followed the methodology described in the ''Change in Ownership'' section above. We divided this amount by ILVA's sales during the POI. On this basis, we determine the net countervailable subsidy to be 1.09 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not receive any benefit under this program.

C. Debt Forgiveness: 1988 Restructuring Plan

As discussed above in the ''Corporate History of ILVA/ILT'' section of this notice, the GOI liquidated Finsider and its main operating companies in 1988, and assembled the group's most productive assets into a new operating company, ILVA S.p.A. (*i.e.*, (old) ILVA).

[4] Since February 1997, ILVA and ILT have had an exclusive sales arrangement, by which, all of ILT products are sold to ILVA, which, in turn, sells them to outside customers. When ILVA purchases goods from ILT, ILVA considers the purchase as an increase of inventory and the transaction is recorded as an ''acquisition cost'' in its accounting books. *See ILVA/ILT Verification Report*, at 2. Because of this sales arrangement, we are using as our denominator, ILVA's 1998 sales sourced from the company's unconsolidated financial statement.

The Finsider restructuring plan was developed at the end of 1987, and was approved by the GOI on June 14, 1988, and by the EC on December 23, 1988. The objective of the plan was to restore the industrial, financial, and economic balance to the public iron and steel-making sector in Italy. The restructuring plan included the voluntary liquidation of Finsider, and IRI's assumption of the debts not covered by the sale of assets of the companies being liquidated. IRI was the majority owner of Finsider, and therefore, the party responsible for payment of Finsider's debts.

A transfer of assets and liabilities from Finsider to (old) ILVA was to be accomplished at the latest by March 31, 1990. Upon completion of the 1988 Restructuring Plan, (old) ILVA owned Finsider's productive assets and a small portion of the group's liabilities. Included in the transfer were the productive portions of the flat-rolled facilities located at Taranto, Genoa, and Novi Ligure.[5] The liquidating companies retained the non-productive assets and the vast majority of the liabilities, which had to be repaid, assumed, or forgiven. Thus, while (old) ILVA emerged from the process with a positive net worth, the other companies were left with capital structures in which their liabilities greatly exceeded the liquidation value of their assets.

We determine that certain financial transactions associated with the 1988 Restructuring Plan constitute countervailable subsidies. In 1988, IRI established a fund of 2,943 billion lire to cover losses which Finsider would realize while in liquidation. As of December 31, 1988, Finsider had accumulated losses in excess of its equity. In order to prevent Finsider from becoming insolvent during 1989, IRI utilized 1,364 billion lire of the fund to forgive debts it was owed by Finsider to cover the losses. We determine that IRI's action of forgiving Finsider's debts in 1989, constitutes a countervailable subsidy.

Later in 1990, IRI forgave debts it was owed by Finsider when it purchased (old) ILVA's stock from Finsider (and Terni) for 2,983 billion lire. The 2,983 billion lire was used to pay the liquidated companies' debts which existed at the time of the sale. Prior to the preliminary determination, ILVA/ILT disagreed with our characterization in *Certain Steel from Italy* that the share purchase was an act of debt forgiveness. They stated that the price paid by IRI for (old) ILVA's shares reflected the market value of the shares and, therefore, the purchase was not an act of debt forgiveness. We preliminarily disagreed with ILVA/ILT's argument and determined that IRI's purchase of (old) ILVA's stock was tantamount to debt forgiveness; however, we stated that we would seek further clarification of the stock purchase transaction for the final determination. *See Preliminary Determination*, 64 FR at 40422.

In the July 23, 1999 questionnaire and at verification, we asked the GOI and ILVA/ILT to provide all feasibility studies, market reports, economic forecasts, or similar documents completed prior to (old) ILVA's share purchase, which related to the future expected financial performance of the company. We examined the McKinsey & Company (McKinsey) report of August 1988, which respondents claim provides a comprehensive analysis of the expected future financial performance of (old) ILVA. For reasons discussed in *Comment 7*, we find that the McKinsey report did not assess the expected future financial health of (old) ILVA. Rather, we find that the report examined the viability of the government's 1988 Restructuring Plan for the period 1988 to 1990, and assessed whether the creation of (old) ILVA would conform with the EC's trade and competition rules. *See GOI Verification Report*, at 5. Therefore, on January 1, 1989, the day on which IRI committed to purchasing (old) ILVA's shares, IRI did not have sufficient financial data and analysis which would have allowed it to evaluate the potential risk versus the expected return in (old) ILVA. *See Id.*, at 9–10. Because IRI did not undertake the financial analysis that a private investor would have prior to purchasing shares, we determine that ILVA's share purchase was not in accordance with the normal investment practice of a private investor.

Consistent with our preliminary determination, we find that IRI's purchase of (old) ILVA's shares from Finsider merely shifted assets (*i.e.*, ownership of company stock) within a family of companies which were all owned by the government. The purpose of IRI's decision to purchase (old) ILVA's stock on January 1, 1989, was to provide to Finsider in liquidation cash to repay debts. As such, IRI's purchase of (old) ILVA's stock was tantamount to debt forgiveness. Thus, we determine that IRI's purchase of (old) ILVA's stock is a countervailable subsidy because it effectively forgave Finsider's debts.

At the *Preliminary Determination*, we noted that Finsider's 1989 Annual Report at page 12 states that: "During the fiscal year, your company [Finsider] recorded losses totaling 1,568 billion lire; therefore, the circumstances reoccur for which the shareholder IRI later renounced its own credits necessary to cover the difference." Thus, Finsider realized a net loss of 1,568 billion lire for fiscal year 1989. In order to avoid insolvency of the company, IRI should have, but did not, forgive the 1,568 billion lire it was due to cover Finsider's losses in excess of equity during 1990. At the *Preliminary Determination*, we stated that we would seek additional information regarding Finsider's 1,568 billion lire of losses.

For this final determination, we have examined whether IRI expected to receive payment of the 1,568 billion lire debt which Finsider owed it in 1990. Based on the record evidence, we determine that IRI did not expect Finsider to pay the 1,568 billion lire debt. First, in 1988, IRI created a fund with the sole purpose to cover the losses which Finsider would realize while in liquidation. Second, IRI utilized 1,364 billion lire of the fund to cover losses in 1989, by forgiving debt of an equivalent amount. In addition, respondents did not submit information on the record regarding the value of the assets which remained in Finsider as of December 31, 1989, to demonstrate that Finsider had viable assets which it could sell for cash to pay the debt owed to IRI. On the basis of these facts, we determine that IRI had no expectation that Finsider would pay the 1,568 billion lire debt. Therefore, we determine that IRI provided to Finsider debt forgiveness of 1,568 billion lire in 1990. For a further discussion see *Comment 6*.

On the basis of the record evidence, we determine that the debt forgiveness which IRI provided in 1989 and 1990, constitute countervailable subsidies within the meaning of section 771(5)(B)(i) of the Act. In accordance with our practice, debt forgiveness is treated as a grant which constitutes a financial contribution under section 771(5)(D)(i) of the Act, and provides a benefit in the amount of the debt coverage. Because the debt forgiveness was received by only (old) ILVA, a predecessor company of ILVA/ILT, we determine that the debt coverage is specific under section 771(5A)(D)(iii)(I) of the Act.

The record of this investigation demonstrates that (old) ILVA did not obtain all of Finsider's assets. Based on the information submitted to the Department, we have calculated the percentage of Finsider's assets which were transferred to (old) ILVA. We calculated that, on December 31, 1988, 71.31 percent of Finsider's assets were transferred to (old) ILVA. We also

[5] The subject merchandise which ILT produced and (new) ILVA exported to the United States in 1998, was produced at the Taranto facilities.

calculated the value of the additional assets which were transferred to (old) ILVA during the course of 1990. We then summed the assets transferred to (old) ILVA in 1989 and 1990, and divided that amount by Finsider's total asset value as of December 31, 1988, to derive the percentage of Finsider's assets which were obtained by (old) ILVA. On this basis, we calculated that 84.94 percent of Finsider's assets were transferred to (old) ILVA. For a further discussion see the Department's Position to *Comment 5.*

To determine the benefit from these countervailable subsidies, we have treated the amounts of debt forgiveness provided under the 1988 Restructuring Plan as non-recurring grants because they were one-time, extraordinary events. For the debt forgiveness provided in 1989, we applied 71.31 percent to the amount of debt forgiveness to determine the amount attributable to (old) ILVA. With respect to the debt forgiveness provided in 1990, we applied 84.94 percent to the total amount of debt forgiveness to determine the amount attributable to (old) ILVA. Because (old) ILVA was uncreditworthy in 1989 and 1990, the years in which the assistance was provided, we used constructed uncreditworthy discount rates to allocate the benefits over time. We allocated the debt forgiveness provided in 1989 and 1990, over a 15 year AUL. *See* the ''Subsidies Valuation Information'' section, above.

We also apportioned the debt coverage by asset value to all (old) ILVA operations in determining the amount applicable to ILP. We next applied the repayment portion of our change in ownership methodology to the debt forgiveness to determine the amount of the subsidy allocable to ILP after its privatization. We divided this amount by ILVA's total sales during the POI. On this basis, we determine the net countervailable subsidy to be 5.12 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not receive any benefit under this program.

In addition, at the time of the *Preliminary Determination*, there was ambiguity as to whether the GOI provided additional financial assistance to Finsider in liquidation, and if so, the amount of assistance actually disbursed (*see* 64 FR at 40423). For purposes of the preliminary determination, we found, based on the information provided to the Department by ILVA/ILT, that IRI provided 738 billion lire to Finsider to cover costs and losses in 1989. *See Id.* However, we stated that we would seek further clarification from the GOI and ILVA/ILT of the assistance provided under the 1988 Restructuring Plan.

At verification, we discussed with GOI and company officials the aid disbursed to Finsider for the closure of steel plants and other losses realized in the liquidation process. In particular, we asked the officials to account for the financial assistance the EC authorized for plant closure costs and liquidation losses in the 89/218/ECSC Decision of December 23, 1988. We learned that the EC authorized the disbursement of a maximum of 738 billion lire in additional financial aid to Finsider to cover costs and losses realized in the liquidation process. However, the GOI and ILVA/ILT officials stated that, although the EC authorized the additional financial assistance, this aid was not needed. They stated that no additional assistance was required because the cash received from the sale of Finsider's assets was greater than expected. *See GOI Verification Report*, at 10 and *ILVA/ILT Verification Report*, at 11. To confirm whether this additional 738 billion lire of assistance was provided, we examined Finsider's and IRI's 1989 financial statements and found no evidence that IRI provided additional aid to Finsider based upon the 89/218/ECSC Decision. Therefore, we determine that IRI did not provide to Finsider an additional 738 billion lire to cover closure costs and losses in 1989.

D. Debt Forgiveness: 1993–1994 Restructuring Plan, ILVA-to-ILP [6]

During 1992 and 1993, (old) ILVA incurred heavy financial losses, which compelled IRI to place the company into liquidation. In December 1993, the Italian government proposed to the EC a plan to restructure and privatize (old) ILVA by the end of 1994. The reorganization provided for splitting (old) ILVA's main productive assets into two new companies, ILP and AST. ILP would consist of the carbon steel flat production of (old) ILVA, receiving the Taranto facilities. AST would consist of the speciality and stainless steel production. The rest of (old) ILVA's productive assets (*i.e.*, tubes, electricity generation, specialty steel long products, and sea transport), together with the bulk of (old) ILVA's existing debt and redundant work force were placed in a third entity known as ILVA Residua. Under the restructuring plan, ILVA Residua would sell those productive units it could for cash to pay debts and then would be liquidated, with IRI (*i.e.*, the Italian government) absorbing the remaining debt.

The demerger of the majority of (old) ILVA's viable manufacturing activities and a portion of its liabilities occurred on December 31, 1993. On January 1, 1994, ILP and AST were formally established as separate corporations which, respectively, had operating assets and relatively modest debt loads. *See ILVA/ILT Verification Report*, at Exhibit 1993/94–1. (Old) ILVA in liquidation became a shell company, known as ILVA Residua, with liabilities far exceeding its assets, although it did contain some operating assets that were later sold. The liabilities which remained with ILVA Residua had to be repaid, assumed, or forgiven. On April 12, 1994, the EC, through the 94/259/ECSC decision, approved the GOI's restructuring and privatization plan for (old) ILVA and IRI's intention to cover ILVA Residua's remaining liabilities.

We determine that ILP received a countervailable subsidy on January 1, 1994, within the meaning of section 771(5)(B)(i) of the Act, when the bulk of (old) ILVA's liabilities were placed in ILVA Residua, rather than being proportionately allocated to ILP and AST when they were formally established as separate corporations. The retention of liabilities by (old) ILVA that should have been transferred to ILP when the company was created constitutes a financial contribution to ILP in accordance with section 771(5)(D)(i) of the Act in the form of debt forgiveness. Prior to the separate incorporation of ILP and AST, (old) ILVA significantly wrote down the value of its assets, thereby increasing the net liabilities that it retained when ILP and AST were created. These write-downs can be tied to specific assets that were either transferred to ILP and AST, or retained by (old) ILVA. In order to more accurately calculate the value of the benefit to ILP from the debt forgiveness, we have factored in the value of each company's asset write-downs, to determine the total benefit from debt forgiveness to ILP and AST, rather than apportioning the total benefit by using a ratio calculated from the asset values each company took at the point of demerger. This is further discussed below and in *Comment 11.*

We determine that the amount of liabilities which resulted from the 1993–94 Restructuring Plan which should have been attributable to ILP, but were instead retained by ILVA Residua, was equivalent to debt forgiveness for ILP at the time of its separate incorporation. In accordance with our practice, debt forgiveness is treated as a

[6] This program was referred to as ''Debt Forgiveness Given in the Course of Privatization in Connection with the 1993–1994 Restructuring Plan'' in the *Initiation Notice* (*see* 64 FR at 13000).

grant which constitutes a financial contribution under section 771(5)(D)(i) of the Act, and provides a benefit in the amount of the debt forgiveness.

We also determine, based on record evidence, that the liquidation process of (old) ILVA did not occur under the normal application of a provision of Italian law, and therefore, the debt forgiveness is *de facto* specific under section 771(5A)(D)(iii)(II) of the Act. As stated above, the liquidation of (old) ILVA was done in the context of a massive restructuring/privatization plan of the Italian steel industry undertaken by the GOI and approved and monitored by the EC. Because (old) ILVA's liquidation was part of an extensive state-aid package to privatize the Italian state-owned steel industry, and the debt forgiveness was received by only privatized (old) ILVA operations, we find that the assistance provided under the 1993–1994 Restructuring Plan is *de facto* specific. In support of this finding, we note the EC's 94/259/ECSC decision, in which the Commission identified the restructuring of (old) ILVA as a single program, the basic objective of which was the privatization of the ILVA steel group by the end of 1994. As set forth in the EC's decision, the 1993–1994 Restructuring Plan was limited by its terms to (old) ILVA and the benefits of the plan were received by only (old) ILVA's successor companies. For a further discussion see *Comment 13.*

To determine the benefit attributable to ILP, it is first necessary to determine the total amount of liabilities which the government forgave. We would prefer to base our calculation on information at the time a portion of (old) ILVA's assets and liabilities were demerged to ILP and the company was separately incorporated. However, the information contained in (old) ILVA's 1993 financial statement regarding the assets and liabilities of the company was found to be unreliable by the company's auditor. We note the following statement within the ''Report on the Management'' section of ILVA Residua's 1994 annual report: ''In the financial statement for 1993, we pointed out how the opening of liquidation would require drawing up a balance sheet formulated not with values of normal operation but with values of estimated cost. The brevity of time available then and the complexity of the valuations to be executed in that meeting allowed putting together only a few limited adjustments of values for which sure elements of judgement were available.'' *See* ILVA Residua's 1994 Annual Report in the February 16, 1999 Petition, at Volume 8, Tab 11. Because this information has been determined to be unreliable, we have resorted to facts otherwise available. As such, we have used information contained in the EC's 10th Monitoring Report which provides the most reliable data that is on the record for determining the benefit conferred by this program. We intend, however, to seek additional information to establish the value of the debt forgiveness at the time of the separate incorporation of ILP, in a subsequent administrative review should this investigation result in a countervailing duty order.

Therefore, based upon the methodology that we employed in the final determination of *Sheet and Strip from Italy,* the amount of liabilities that we attributed to ILP is based on the gross liabilities left behind in ILVA Residua, as reported in the EC's 10th Monitoring Report (*see* 64 FR at 30628). In calculating the amount of unattributable liabilities remaining after the separate incorporation of ILP, we started with the most recent ''total comparable indebtedness'' amount from the 10th Monitoring Report, which represents the indebtedness, net of debts transferred in the privatization of ILVA Residua's operations and residual asset sales, of a theoretically reconstituted, pre-liquidation (old) ILVA. In order to calculate the total amount of unattributed liabilities which amounted to countervailable debt forgiveness, we made the following adjustments to this figure: for the residual assets that had not actually been liquidated as of the 10th and final Monitoring Report; for assets that comprised SOFINPAR, a real estate company (because these assets were sold prior to the demergers of AST and ILP); for the liabilities transferred to AST and ILP; for income received from the sale of ILVA Residua's productive assets; and for the amount of debts transferred to Cogne Acciai Speciali (CAS), an ILVA subsidiary that was left behind in ILVA Residua and later spun off, as well as the amount of (old) ILVA debt attributed to CAS and countervailed in *Wire Rod from Italy* (*see* 63 FR at 40478). As discussed above, we subtracted the value of the asset write-downs taken by ILVA.

The amount of liabilities remaining represents the pool of liabilities that were not individually attributable to specific (old) ILVA assets. We apportioned this debt to ILP, AST, and viable assets of ILVA Residua based on their relative asset values. We used the total consolidated asset values reported for ILP and AST for the year ending December 31, 1993.[7] The asset values recorded for ILP and AST as of December 31, 1993, were the opening asset values for each company when they were separately incorporated on January 1, 1994. *See ILVA/ILT Verification Report*, at 12 and Exhibit 1993/94–2, for ILP's asset value. For ILVA Residua, we used the sum of the purchase price plus debts transferred as a surrogate for the viable asset value of the operations sold from ILVA Residua. Because we subtracted a specific amount of ILVA's gross liabilities attributed to CAS in *Wire Rod from Italy*, we did not include its assets in the amount of ILVA Residua's privatized assets. Also, we did not include in ILVA Residua's viable assets those assets sold to IRI, because the sales do not represent sales to a non-governmental entity. To ensure that liabilities retained by ILVA Residua were properly apportioned across the three companies, we added the amount of the write-downs that were tied to the asset pool which ILP took when it was separately incorporated from (old) ILVA. The total amount of write-downs were previously subtracted from the pool of liabilities.

We have treated the debt forgiveness provided to ILP as a non-recurring subsidy because it was a one-time, extraordinary event. The discount rate we used in our grant formula was a constructed uncreditworthy benchmark rate based on our determination that (old) ILVA was uncreditworthy in 1993, the year in which the 1993–94 Restructuring Plan was approved by the GOI. *See* ''Benchmarks for Long-Term Loans and Discount Rates'' and ''Creditworthiness'' sections, above. We followed the methodology described in the ''Change in Ownership'' section above to determine the amount of benefit appropriately allocated to ILP after its privatization. We divided this amount by ILVA's total sales during the POI. On this basis, we determine the net countervailable subsidy to be 13.27 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not receive any benefits under this program.

E. Capital Grants to Nuova Italsider Under Law 675/77

In 1977, the Italian Parliament passed Law 675 to establish an industrial plan for Italy which was experiencing an economic downturn. The objective of the law was to identify those industries vital to the economic health and development of Italy and provide to them financial assistance to modernize

[7] Because the ultimate objective of the 1993–94 Restructuring Plan was the privatization of ILP and AST, which were separately incorporated from (old) ILVA on January 1, 1994, we have no reason not to believe that the value of the assets which were transferred to ILP and AST were accurately assessed during the liquidation process.

and restructure production facilities. *See GOI Verification Report*, at 16. In total, eleven sectors were identified as eligible for assistance. *See Certain Steel from Italy*, 58 FR at 37330–31. The types of funding provided under Law 675/77 included: (1) interest payments on bank loans and bond issues; (2) low interest loans granted by the Ministry of Industry; (3) grants for companies located in the South; (4) grants for personnel retraining; and (5) increased VAT reductions for firms located in the Mezzogiorno area.

In *Certain Steel from Italy*, we verified that of the sectors which received Law 675/77 funding, steel accounted for 36.4 percent of the total funding provided under Law 675/77 (*see* 58 FR 37331). On this basis, we determined that assistance provided to steel companies under Law 675/77 is limited to a specific enterprise or industry, or group of enterprises or industries, and therefore is countervailable.

In regard to the record of the instant investigation, the GOI stated that the objective of the capital grants program was to support the development of regions in the south of Italy. *See* GOI's May 28, 1999 QR. The only eligibility criterion for receipt of this ''one-time'' assistance was the location of factories in the south of Italy.

Consistent with our preliminary finding, we determine that this program constitutes a countervailable subsidy within the meaning of section 771(5)(B)(i) of the Act. The capital grants constitute a financial contribution under section 771(5)(D)(i) of the Act providing a benefit in the amount of the grants. Because the steel sector was found to be the dominant user of Law 675/77 and the capital grants were limited to enterprises located in the south of Italy, we determine that the program is specific under section 771(5A)(D)(iii) and (iv) of the Act.

At the verification of this investigation, we examined the application which Italsider submitted on February 20, 1980, for assistance under Law 675/77, and the corresponding approval notification of November 19, 1982. We noted that Nuova Italsider, the successor company to Italsider, was awarded a grant of 125,040 million lire. We examined Nuova Italsider's financial statements and learned that the grant was disbursed in several tranches during the years 1985, 1986, and 1987.

To determine the benefit, we have treated the capital grant as a non-recurring subsidy because the receipt of the grant was a one-time, extraordinary event. Because the benefit to Nuova Italsider is greater than 0.5 percent of the company's sales for 1982 (the year in which the grant was approved), we allocated the benefit over a 15 year AUL. *See* section 351.524(b)(2) of the CVD Regulations. We applied the change in ownership methodology to the capital grant to determine the subsidy allocable to ILP after its privatization. We divided this amount by ILVA's total sales during the POI. On this basis, we determine the net countervailable subsidy to be 0.13 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not use this program.

F. Early Retirement Benefits

Law 451/94 was created to conform with EC requirements of restructuring and capacity reduction of the Italian steel industry. Law 451/94 was passed in 1994, and enabled the Italian steel industry to implement workforce reductions by allowing steel workers to retire early. During the 1994–1996 period, and into January 1997, Law 451/94 provided for the early retirement of up to 17,100 Italian steel workers. Benefits applied for during this period continue until the employee reaches his/her natural retirement age, up to a maximum of ten years.

In the final determinations of *Plate in Coils from Italy* and *Sheet and Strip from Italy,* 64 FR at 15514–15 and 64 FR at 30629–30, respectively, as well as in the *Preliminary Determination* of the instant investigation, 64 FR at 40425–26, the Department determined that early retirement benefits provided under Law 451/94 are countervailable subsidies under section 771(5)(B)(i) of the Act. Law 451/94 provides a financial contribution, as described in section 771(5)(D)(i) of the Act, because Law 451/94 relieves the company of costs it would have normally incurred by having to employ individuals until the normal age of retirement. Also, because Law 451/94 was developed for, and exclusively used by, the steel industry, we determined that Law 451/94 is specific within the meaning of section 771(5A)(D)(iii) of the Act. No new factual information or evidence has led us to change our prior findings that early retirements under Law 451/94 are countervailable.

As in the *Preliminary Determination,* we have treated one-half of the amount paid by the GOI as benefitting the company. Recognizing that, under Law 223/91, ILP would have been required to enter into negotiations with the unions before laying off workers, it is impossible for the Department to determine the outcome of those negotiations absent Law 451/94. At one extreme, the unions might have succeeded in preventing lay offs. If so, the benefit to ILP would be the difference between what it would have cost to keep those workers on the payroll and what the company actually paid under Law 451/94. At the other extreme, the negotiations might have failed and ILP would have incurred only the minimal costs described under the so-called ''Mobility'' provision of Law 223/91, which identifies the minimum payment the company would incur when laying off workers. The benefit to ILP would have been the difference between what it would have paid under Mobility and what it actually paid under Law 451/94.

We have no basis for believing either of these extreme outcomes would have occurred. It is clear, given the EC regulations that called for restructuring within the steel industry, that ILP would have laid off workers. However, we do not believe that ILP would have simply fired the workers without reaching accommodation with the unions. GOI officials have indicated that failure to negotiate a separation package with the unions would likely have led to social strife. Therefore, we have proceeded on the assumption that ILP's early retirees would have received some support from ILP.

In attempting to determine the level of post-employment support that ILP would have negotiated with its unions, we examined the situation facing (old) ILVA before ILP and AST were separately incorporated. By the end of 1993, (old) ILVA had established an overall plan for terminating redundant workers—a plan that would ultimately affect both ILP and AST. Under this plan, early retirees would first be placed on a temporary worker assistance measure under Law 223/91, Cassa Integrazione Guadagni—Extraordinario (CIG–E), while awaiting the passage of Law 451/94, and then would receive benefits under Law 451/94, once implemented. This indicates that, at the time an agreement was being negotiated with the unions and the Ministry of Labor on the terms of the layoffs, (old) ILVA and its workers were aware that government contributions would ultimately be made to workers' benefits. In such situations, *i.e.*, where the company and its workers are aware at the time of their negotiations that the government will be making contributions to the workers' benefits, the Department's prior practice has been to treat half of the amount paid by the government as benefitting the company. We have stated that when the government's willingness to provide assistance is known at the time the contract is being negotiated, this assistance is likely to have an effect on the outcome of the negotiations. While we continue to adhere to this logic in the preamble to the CVD Regulations, we stated that we would examine the facts of each case to determine the appropriate portion of the funds to be considered countervailable. *See* CVD Regulations, 63 FR at 65380.

With respect to ILP and its workers, we determine that, under Italian Law 223, ILP would be required to negotiate with its unions about the level of benefits that would be made to workers permanently separated from the company. Since (old) ILVA and its unions were aware at the time of their negotiations that the GOI would be making payments to those workers under Law 451/94, some portion of the payment is countervailable. However, we have no basis for apportioning the benefit. Therefore, we consider the benefit to ILVA/ILT to be one-half of the amount paid to the workers by the GOI under Law 451/94.

Consistent with the Department's practice with regard to allocation of worker-related subsidies, we have treated benefits to ILVA/ILT under Law 451/94 as recurring grants expensed in the year of receipt. To calculate the benefit received by ILVA/ILT during the POI, we multiplied the number of employees by employee type (blue collar, white collar, and senior executive) who retired early by the average salary by employee type. Since the GOI was making payments to these workers equaling 80 percent of their salary, we attributed one-half of that amount to ILVA/ILT. Therefore, we multiplied the total wages of the early retirees by 40 percent. We then divided this total amount by ILVA's total sales during the POI. On this basis, we determine a net countervailable subsidy to be 1.39 percent *ad valorem* for ILVA/ILT.

As mentioned in the ''Corporate History of ILVA/ILT'' section of this notice, in October 1993, (old) ILVA entered into liquidation and became known as ILVA Residua. In December 1993, IRI initiated the demerger of (old) ILVA's main productive assets into two new companies, ILP and AST. On January 1, 1994, ILP and AST became separately incorporated firms. The remainder of (old) ILVA's productive assets and existing liabilities, along with much of the redundant workforce, was placed in ILVA Residua. By placing much of this redundant workforce in ILVA Residua, ILP and AST were able to begin their respective operations with a relatively ''clean slate'' in advance of their privatizations. ILP and AST were relieved of having to assume their respective obligations to those redundant workers who were placed in ILVA Residua and received early retirement benefits under Law 451/94. Therefore, we have determined that ILVA/ILT has received a countervailable benefit during the POI, because it was relieved of a financial obligation that would otherwise have been due.

In order to calculate the subsidy received by ILVA/ILT during the POI, we first needed to determine the appropriate number of early retirees in ILVA Residua that originally should have been apportioned to ILP. Consistent with our findings for the 1993–94 Restructuring Plan, we used the asset value we apportioned to ILP as a percentage of total viable assets of (old) ILVA immediately prior to ILP's separate incorporation. We then multiplied this percentage by the total number of ILVA Residua early retirees. It was then necessary to estimate the numbers and salaries of early retirees by employee type since the GOI did not provide this information. To do this, we applied the same ratios of workers by employee type as ILP retired, and applied this to ILVA Residua. We also used the same salaries of ILVA/ILT employees by worker type. As we did with ILP early retirees, we then multiplied the number of employees, by employee type, by the average salary by employee type. Since the GOI was making payments to these workers equaling 80 percent of their salary, we attributed one-half of that amount to ILVA/ILT. Therefore, we multiplied the total wages of the early retirees by 40 percent. We then divided this total amount by ILVA's total sales during the POI. On this basis, we determine a net countervailable subsidy to be 0.66 percent *ad valorem* for ILVA/ILT.

The Sidercomit unit of ILVA/ILT also received early retirement benefits under Law 451/94 separately from ILVA/ILT. As we did with ILVA/ILT, we multiplied the total wages of the early retirees by 40 percent and then divided this amount by the total sales of ILVA during the POI. On this basis, we preliminarily determine the net countervailable subsidy to be less than 0.005 percent *ad valorem* for ILVA/ILT.

Upon consolidation of the above determined rates, we determine a total net countervailable subsidy of 2.06 percent *ad valorem* for ILVA/ILT under Law 451/94 for the POI. Palini & Bertoli did not use this program.

G. Exemptions From Taxes

Presidential Decree 218/1978 exempted firms operating in the Mezzogiorno from both the ILOR and IRPEG profit taxes. Companies are eligible for full exemption from the 16.2 percent ILOR tax on profits arising from eligible projects in the Mezzogiorno and less developed regions of the center-north of Italy for ten consecutive years after profits first arise. New companies undertaking productive activities in the Mezzogiorno are entitled to a full exemption from the IRPEG tax (37 percent of a majority of profits and 19 percent of certain profits) for ten consecutive years after the project is completed. While the ILOR tax was repealed beginning with tax year 1998, a successor tax, IRAP, has been introduced beginning with tax year 1998.

We determine that exemptions from ILOR and IRPEG taxes are countervailable subsidies in accordance with section 771(5)(B)(i) of the Act. These tax exemptions constitute financial contributions under section 771(5)(D)(ii) of the Act, since revenue that is otherwise due is being foregone. Because these exemptions are limited to a group of enterprises or industries within a designated geographical region, they are specific in accordance with section 771(5A)(D)(iv). Benefits resulting from ILOR and IRPEG tax exemptions were found to be countervailable in *Certain Steel from Italy* (*see* 58 FR at 37334–35).

ILT received an exemption from the IRPEG tax and a partial exemption from the ILOR tax on its 1997 tax return, filed during the POI. In order to calculate the benefit stemming from the exemption from IRPEG, we multiplied ILT's total profits that would otherwise have been subject to IRPEG by the IRPEG tax rate. We then divided the result by ILVA's total sales during the POI to determine the *ad valorem* subsidy. On this basis, we determine the subsidy to be 1.05 percent *ad valorem* for ILVA/ILT.

To compute ILT's partial exemption from ILOR, we took the amount of profits exempted from the ILOR tax, as shown in ILVA/ILT Verification Exhibits Tax-2 and Tax-3, and multiplied that amount by the ILOR tax rate of 16.2 percent to determine the benefit. We then divided the result by ILVA's total sales during the POI to determine the *ad valorem* subsidy. On this basis, we determine the subsidy to be 0.24 percent *ad valorem* for ILVA/ILT. Upon consolidation of the IRPEG and ILOR exemptions, we determine the net consolidated subsidy for ILVA/ILT to be 1.29 percent *ad valorem*. Palini & Bertoli did not use this program.

H. Exchange Rate Guarantees Under Law 796/76

Law 796/76 established a program to minimize the risk of exchange rate fluctuations on foreign currency loans. All firms that contract foreign currency loans from the European Coal and Steel Community (ECSC) or the Council of Europe Resettlement Fund (CERF) could apply to the Ministry of the Treasury (MOT) to obtain an exchange rate guarantee. The MOT, through the Ufficio Italiano di Cambi (UIC), calculates loan payments based on the lire-foreign currency exchange rate in effect at the time the loan is contracted (*i.e.,* the base rate). The program establishes a floor and ceiling for exchange rate fluctuations, limiting the maximum fluctuation a borrower would face to two percent above or below the base rate. If the lire depreciates more than two percent against the foreign currency, a borrower is still able to purchase foreign currency at the established (guaranteed) ceiling rate. The MOT absorbs the loss in the amount of the difference between the guaranteed rate and the actual rate. If the lire appreciates against the foreign currency, the MOT realizes a gain in the amount of the difference between the floor rate and the actual rate.

This program was terminated effective July 10, 1992, by Decree Law 333/92. However, the pre-existing exchange rate guarantees continue on any loans outstanding after that date. Italsider contracted two loans, one in 1978, and the other in 1979. Both of these loans were ultimately transferred to ILVA/ILT. These two foreign currency denominated loans were outstanding during the POI and exchange rate guarantees applied to both.

We determine that this program constitutes a countervailable subsidy within the meaning of section 771(5)(B)(i) of the Act. This program provides a financial contribution, as described in section 771(5)(D)(i) of the Act, to the extent that the lire depreciates against the foreign currency beyond the two percent limit. When this occurs, the borrower receives a benefit in the amount of the difference between the guaranteed rate and the actual exchange rate.

During the recent verification of the GOI in the *Plate in Coils from Italy* and *Sheet and Strip from Italy* investigations, GOI officials explained that over the last decade, roughly half of all guarantees made under this program were given to coal and steel companies. *See Results of Verification of the Government of Italy,* Memorandum to the File, dated February 3, 1999 (public version of the document is available on the public file in the CRU). This is consistent with the Department's finding in a previous proceeding that the Italian steel industry has been a dominant user of the exchange rate guarantees provided under Law 796/76. *See Final Affirmative Countervailing Duty Determination: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Italy,* 60 FR 31996 (June 19, 1995). No new information to contradict these earlier findings of specificity has been received in this case. Therefore, we determine that the program is specific under section 771(5A)(D)(iii)(II) of the Act.

Once a loan is approved for exchange rate guarantees, access to foreign exchange at the established rate is automatic and occurs at regular intervals throughout the life of the loan. Therefore, we are treating the benefits under this program as recurring grants. ILVA/ILT and its predecessor companies from which these loans were transferred, paid a foreign exchange commission fee to the UIC for each payment made. 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 the purposes of calculating the countervailable benefit, we have added the foreign exchange commission to the total amount ILVA/ILT paid under this program during the POI. *See Wire Rod from Italy,* 63 FR at 40479.

Under this program, we have calculated the total countervailable benefit as the difference between the total loan payment due in foreign currency, converted at the current exchange rate, less the sum of the total loan payment due in foreign currency converted at the guaranteed rate and the exchange rate commission. We divided this amount by ILVA's total sales during the POI. On this basis, we determine the net countervailable subsidy to be 0.07 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not use this program.

I. Interest Grants on Loans Under Law 64/86

The GOI has maintained a system of ''extraordinary intervention'' in southern Italy since the 1950's, authorizing aid to the disadvantaged region. Over time, various laws were passed, including Decree 218/78, relating to the extraordinary intervention in the South. In 1986, Law 64/86 was passed in order to consolidate all laws relating to the extraordinary intervention in the South into one development policy.

In 1992, Sidercomit was created as a subsidiary of (old) ILVA. In 1997, Sidercomit became an operating unit within (new) ILVA. During verification, the Department determined that in 1996, Sidercomit received a loan for which it was granted interest contributions under Law 64. Subsequent to receiving this loan, but prior to the POI, Sidercomit was subsumed into ILVA as an operating unit, and was no longer a separate corporate entity.

ILVA/ILT did not report these interest contributions in its questionnaire responses. We found at verification, through examining the financial statements of (new) ILVA and discussions with company officials, that Sidercomit had received a ''soft loan'' in 1996, which was ultimately recorded in (new) ILVA's financial statements once Sidercomit was subsumed into (new) ILVA. We further learned that, under this loan, the Ministry of Industry was to assume a large part of the interest payments, which effectively reduced the payments for Sidercomit. The Ministry pays the interest contributions directly to the bank. As such, these contributions reduce the interest rate that Sidercomit (and now (new) ILVA) must pay on the loan. Accordingly, under section 771(5)(D)(i) of the Act, we have determined that these interest contributions represent financial contributions.

Under section 771(5A)(D)(iv) of the Act, we determine that these contributions are specific since assistance under Law 64 was only available to a limited geographical region within the country. This is consistent with our determinations in numerous Italian countervailing duty investigations, including the *Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy,* 61 FR 30288, 30293 (June 14, 1986). Pursuant to section 771(5)(E)(ii) of the Act, we are calculating the benefit conferred as the ''difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.'' In this particular case, the benefit conferred is equal to the amount of the interest contributions provided by the GOI during the POI. We have divided the benefit over ILVA's total sales during the POI. On this basis, we determine the net countervailable subsidy to be less than 0.005 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not use this program.

Programs of the Regional Government of Friuli-Venezia Giulia

A. Development Grants Under Law 30 of 1984

Law 30 of 1984 was enacted by the Regional Government of Friuli-Venezia

Giulia to provide one-time development grants to companies for investments in industrial projects, including the construction of new plants and modernization or expansion of existing plants. Eligible companies could receive a grant amounting to 20 percent of the cost of the investment, with the grant not to exceed 1,000,000,000 lire. Law 30 has not been officially terminated by Decree, but funding for grants outlined under the law has not been provided since 1993. Those projects approved for funding prior to 1993, would still receive the grant at the conclusion of the investment project.

At verification, the Department learned that companies from all industries that planned future industrial investments were eligible to receive development grants under Law 30. Eligibility under the law was, however, confined to certain geographical areas within the Friuli-Venezia Giulia region. Eligible firms were those operating in mountainous zones north of Udine, those in the provinces of Trieste and Gorizia, and those in the industrial areas of Aussa Corno and San Vitto al Tagliamento. Because these grants are available to firms within designated areas of the Friuli-Venezia Giulia region, they are specific in accordance with section 771(5A)(D)(iv) of the Act. The grants provided under this program represent a financial contribution under section 771(5)(D)(i) of the Act.

In 1989, Palini & Bertoli submitted to the regional government an application for a development grant under Law 30. The company received approval for the grant in 1989, and received the grant in 1993. To determine the benefit, we have treated the grant as a non-recurring subsidy because receipt of the grant was a one-time, extraordinary event. Because the benefit to Palini & Bertoli is greater than 0.5 percent of the company's sales for 1989 (the year in which the grant was approved), we allocated the benefit over a 15 year AUL. *See* section 351.524(b)(2) of the CVD Regulations. To calculate the benefit, we determined the benefit allocable to the POI and divided it by Palini & Bertoli's total sales during the POI. On this basis, we determine the net countervailable subsidy to be 0.12 percent *ad valorem* for Palini & Bertoli. ILVA/ILT did not use this program.

European Commission Programs

A. ECSC Loans Under Article 54

Article 54 of the 1951 ECSC Treaty established a program to provide industrial investment loans directly to the member iron and steel industries to finance modernization and purchase new equipment. Eligible companies apply directly to the EC (which administers the ECSC) for up to 50 percent of the cost of an industrial investment project. The Article 54 loans are generally financed on a ''back-to-back'' basis. In other words, upon granting loan approval, the ECSC borrows funds (through loans or bond issues) at commercial rates in financial markets which it then immediately lends to steel companies at a slightly higher interest rate. The mark-up is to cover the costs of administering the Article 54 program.

We determine that these loans constitute a countervailable subsidy within the meaning of section 771(5)(B)(i) of the Act. This program provides a financial contribution, as described in section 771(5)(D)(i) of the Act, which confers a benefit to the extent the interest rate is less than the benchmark interest rate. The Department has found Article 54 loans to be specific in several proceedings, including *Electrical Steel from Italy*, 59 FR at 18362, *Certain Steel from Italy*, 58 FR at 37335, and *Plate in Coils from Italy*, 64 FR at 15515, because loans under this program are provided only to iron and steel companies. The EC has also indicated on the record of this investigation that Article 54 loans are only available to steel and coal companies which fall within the scope of the ECSC Treaty. Therefore, we determine that this program is specific pursuant to section 771(5A)(D)(i) of the Act.

ILVA/ILT had two long-term, fixed-rate loans outstanding during the POI, each denominated in U.S. dollars. These loans were contracted by Italsider, one in 1978 and one in 1979. Consistent with *Wire Rod from Italy*, we have used as our benchmark the average yield to maturity on selected long-term corporate bonds as reported by the U.S. Federal Reserve, since both of these loans were denominated in U.S. dollars (*see* 63 FR at 40486). We used these rates since we were unable to find a long-term borrowing rate for loans denominated in U.S. dollars in Italy. The interest rate charged on both of ILVA/ILT's two Article 54 loans was lowered part way through the life of the loan. The interest rate on the loan contracted in 1978 was lowered in 1987, and the rate on the loan contracted in 1979 was lowered in 1992. Therefore, for the purpose of calculating the benefit, we have treated these loans as if they were contracted on the date of this rate adjustment. Because ILVA was uncreditworthy in the year these loans were contracted, 1987 and 1992 (based on the interest rate adjustments mentioned above), we calculated the uncreditworthy benchmark rate in accordance with section 351.505 (a)(3)(iii) of the CVD Regulations. *See* ''Benchmark for Long-Term Loans and Discount Rates'' section, above.

To calculate the benefit under this program, pursuant to section 351.505(c)(2) of the CVD Regulations, we employed the Department's long-term fixed-rate loan methodology. We compared ILVA/ILT's interest rates on the two loans to our benchmark interest rate for uncreditworthy companies on interest paid by ILVA/ILT during the POI. We then divided the benefit by ILVA's total sales during the POI. On this basis, we determine the net countervailable subsidy to be 0.02 percent *ad valorem* for ILVA/ILT. Palini & Bertoli did not use this program.

ILVA/ILT was also repaying four ECSC loans under Article 54 during the POI that were taken by ILP for the construction of housing for coal and steel industry workers. Funding for these loans came entirely from the ECSC operational budget, which is composed of levies imposed on coal and steel producers, investment income on those levies, guarantee fees and fines paid to the ECSC, and interest received from companies that have obtained loans from the ECSC. Consistent with previous determinations, because ECSC funding for these types of loans is completely from non-government sources, we find these loans to be not countervailable. *See Electrical Steel from Italy*, 59 FR at 18364 and *Certain Steel from Italy*, 58 FR at 37336.

II. Programs Determined To Be Not Countervailable

Government of Italy Programs

A. Law 308/82

On March 16, 1999, the Department initiated on the program ''Grants to ILVA.'' In their May 13, 1999 response, ILVA/ILT report that Italsider was approved for a grant under Law 308/82 in 1983. In *Certain Steel from Italy*, we verified that benefits under Law 308/82 were widely and fairly evenly distributed with no one sector or sectors receiving a disproportionate amount. Because Law 308/82 grants were not limited to a specific enterprise or industry, or group of enterprises or industries, we determined them to be not countervailable. *See Certain Steel from Italy,* 58 FR at 37336. No new factual information or evidence of changed circumstances has been provided to the Department in this instant investigation to warrant the Department to revisit its earlier determination that grants provided under Law 308/82 are not countervailable.

B. Unpaid Portion of Payment Price for ILP

Petitioners alleged that the GOI effectively gave RIVA a zero-interest loan on a portion of the contract price agreed to by RIVA for ILP, because RIVA has not paid the full contract price for ILP. RIVA reported that the company entered into arbitration after the transfer of ownership of ILP in April 1995. RIVA stated that it did not invoke arbitration to challenge the purchase price of ILP, but invoked arbitration to obtain an indemnity from pre-existing and unreported liabilities in accordance with the indemnification provision of the contract of sale. The dispute concerns whether IRI owes RIVA a sum of money as indemnification for liabilities, which RIVA has potentially incurred as a result of the acquisition of ILP. To preserve its leverage in the dispute and ensure that the company will obtain relief in the event that it is awarded indemnification by the arbitration panel, RIVA has withheld payment of amounts due to IRI under the contract of sale.

We inquired about the arbitration procedure and whether any Italian company which purchases either a government-owned or private entity can enter into arbitration to remedy a dispute. RIVA reported that Article 25 of the contract of sale provides for arbitration under the rules of the International Chamber of Commerce and that Article 806 of the Italian Civil Code authorizes the use of arbitration to settle litigation. Any company in Italy that purchases another company from either the government or a private seller can include such an arbitration provision in the contract of sale. Because the use of arbitration to settle disputes between two parties is a normal commercial practice in Italy and there is no information that this particular arbitration has proceeded in a non-commercial manner, we determine that no countervailable benefit has been provided under this process.

Programs of the Regional Government of Friuli-Venezia Giulia

A. Interest Contributions Under Law 25 of 1965

Under Regional Law 25 of 1965, companies making manufacturing investments in the region of Friuli-Venezia Giulia were eligible to receive interest contributions from the region on loans taken out for those investments. For a firm to receive interest contributions, it had to construct a new industrial plant, or modernize or expand an existing plant. Interest contributions effectively lower the interest rate on a loan taken out for such an investment. While the firm pays interest on the loan at an agreed-upon rate, the regional government will reimburse the company the difference between the agreed-upon rate and a reference rate decided on by the region. The Department learned at verification that, although the program has not been officially terminated, no regional investments made after 1991 have been approved for interest contributions.

The regional government approved Palini & Bertoli for interest contributions in 1991. The company began receiving payments in 1993, after construction of a new plant was completed. During the POI, Palini & Bertoli received two interest contributions under Law 25. We verified that assistance under Law 25 was provided to a large number of firms from a wide range of industries throughout the entire region of Friuli-Venezia Giulia, and that the steel industry did not receive a disproportionate share of assistance under the program. Because interest contributions under Regional Law 25 are not specific in accordance with section 771(5A)(D) of the Act, we determine that this program is not countervailable.

III. Programs Determined To Be Not Used

Government of Italy Programs

A. Lending From the Ministry of Industry Under Law 675/77

ILVA/ILT reported that at the time of its privatization the company became responsible for certain loan obligations of its predecessor companies. ILVA/ILT was responsible for repaying loans provided under Law 675/77, which were applicable to those facilities that produce the subject merchandise. We confirmed at verification that the repayment obligations on these loans ended in December 1997. We also verified with the GOI that no new loans have been provided under Law 675/77 since 1987. Because ILVA/ILT did not have loans under Law 675/77 outstanding during the POI, we determine that the program was not used.

B. Interest Contributions Under Law 675/77

ILVA/ILT reported and we verified that the company received an interest contribution in 1998, against a loan provided under Law 675/77. Because the loan against which the interest contribution was received was repaid in full in December 1997, we determine that this program was not used during the POI. It is the Department's practice to treat an interest contribution as countervailable on the date the company made the corresponding interest payment, despite any delay in the receipt of the interest contribution. This is because the company's entitlement to the interest contribution was automatic when it made the interest payment and the amount of any benefit from the interest contribution was known at the time of the interest payment. Therefore, we find, for purposes of the benefit calculation, that the benefit was received at the time the interest payment was made, and, as such, the program was not used during the POI. *See e.g., Sheet and Strip from Italy*, and *Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Italy*, 60 FR 33577, 33579 (June 28, 1995) (*Oil Country Tubular Goods from Italy*).

C. Law 305/89

ILVA/ILT reported that (old) ILVA, its predecessor company, applied for a grant under Law 305/89 in 1990. The GOI approved (old) ILVA's application in 1991, and awarded the company a grant of 2.2 billion lire. However, payment of the grant was delayed. We learned at verification that ILP received a portion of the grant in 1996, and ILVA/ILT received the remaining portion of the grant in 1997. We applied the 0.5 percent allocation test against the full grant amount approved in 1991. *See* section 351.524(b)(2) of the CVD Regulations. We calculated the amount of the grant received under Law 305/89 to be less than 0.5 percent *ad valorem* of (old) ILVA's sales in 1991. Therefore, even if we determined that Law 305/89 is countervailable, the grant would have been expensed in the years of receipt, 1996 and 1997. Because the grant would be expensed, it would not provide any benefit to ILVA/ILT during the POI. Therefore, we determine that Law 305/89 was not used by ILVA/ILT.

D. Interest Grants for ''Indirect Debts'' Under Law 750/81

In 1984, Italsider received a residual payment of 25.3 billion lire against interest grants provided in fiscal years 1981, 1982, and 1983. At verification, we learned that under Law 750 of 1981, the GOI approved funding for IRI, which was providing financial assistance to its sub-holdings that were incurring debts. *See GOI Verification Report*, at 19–20. In 1981, 1982, and 1983, Italsider incurred costs, associated with debts, at the Bagnoli plant and the Elba Island mines, and the grant received in 1984, was for the plant and mines. However, since the grant was received in 1984, the POI (*i.e.*, 1998) would be the last year of the allocation period. Therefore, even if we were to allocate the grant over time, rather than expense it in the year of receipt, any benefit during the POI would be less than 0.005 percent *ad valorem.*

E. Capital Grants Under Decree 218/78 and Law 64/86

The GOI reported that (old) ILVA received a grant in 1988, under Decree 218. The original grant amount was approved in 1978. We applied the 0.5 percent test against the full grant amount approved in 1978. *See* section 351.524(b)(2) of the CVD Regulations. We calculated the benefit as less than 0.5 percent *ad valorem* of Italsider's sales in 1978. Additionally, Sidercomit and Centro Acciai received several grants under Decree 218 and Law 64 between 1984 and 1997. We summed all grants by year of approval and applied the 0.5 percent test against the total amounts for each year. We calculated the benefit as less than 0.5 percent *ad valorem* of the sales of ILVA/ILT or its respective predecessor company corresponding to the year the grants were received. Therefore, even if we determined that this program is countervailable, the above-mentioned grants would have been expensed in the respective years of receipt. Because the grants would be expensed and would not provide any benefit to ILVA/ILT during the POI, we determine that this program was not used.

F. Urban Redevelopment Packages Under Law 181/89

ILVA/ILT and its predecessor companies, ILP and (old) ILVA, received grants under Law 181/89 between 1991 and 1997. No grants were received during the POI. Because the approved amount of each grant, separately, was less than 0.5 percent of total sales of ILVA/ILT (or predecessor company) in the corresponding year, we would expense the benefit of each approved grant in that year. *See* section 351.524(b)(2) of the CVD Regulations. Therefore, since the grants would be expensed in the years of receipt, and ILVA/ILT would not realize any benefit during the POI, we determine that Urban Redevelopment Packges under Law 181/89 were not used.

G. Grants to ILVA

For a discussion, *see* Comment 20, below.

H. Closure Payments Under Law 481/94 and Predecessor Law

I. Closure Grants Under Laws 46 and 706

J. Decree Law 120/89

K. Law 488/92

L. Law 341/95 Tax Concessions

M. Interest Rate Reductions Under Law 902

N. Interest Contributions Under the Sabatini Law

O. Export Marketing Grants Under Law 394/81

P. Law 549/95: Tax Exemptions on Reinvested Profits for Steel Producers in Objective 1, 2, and 5(B) Areas

European Commission Programs

A. European Social Fund (ESF)

The GOI has reported that ESF grants were provided to Nuova Italsider, Italsider and (old) ILVA from 1985 through 1993. Because the total of all grants provided under the program in each year was less than 0.5 percent of total sales of Nuova Italsider, Italsider or (old) ILVA (depending on the year of approval) in the corresponding year, we would expense the benefit of each grant payment received in that year. *See* section 351.524(b)(2) of the CVD Regulations. Therefore, there is no benefit to ILVA/ILT during the POI.

ILVA/ILT has reported that ESF payments were also made to ILP in 1994 and 1995, and to ILVA/ILT in 1998, for the DUSID, DUTEM, and DUMES training programs having taken place in 1994 and 1995. While some ILP employees took part in these training programs, there is no evidence that ILP benefitted from the ESF payments under these training programs, or that these programs provided training to ILP employees that ILP would otherwise have had to incur. As such, we find that these programs do not provide a countervailable subsidy. *See* Comment 19, below.

Based on the fact that grants received in 1985 through 1993, would provide no benefit to ILVA/ILT during the POI, and that funds received for the DUSID, DUTEM, and DUMES training programs are not countervailable, we determine that the ESF was not used by ILVA/ILT.

B. Interest Rebates on ECSC Article 54 Loans

C. ECSC Conversion Loans, Interest Rebates, Restructuring Grants and Traditional and Social Aid Under Article 56

D. ERDF Aid

E. Resider and Resider II (Commission Decision 88/588)

IV. Programs Determined Not To Exist or To Have Been Terminated

A. Additional Debt Forgiveness in the Course of Privatization

B. Grants to ILVA To Cover Closure and Liquidation Expenses as Part of the 1993–1994 Privatization Plan

C. Working Capital Grants to ILVA in 1993

With respect to the programs A, B, and C listed above, the GOI reported in its May 10, 1999 questionnaire response that all monetary assistance (old) ILVA received in the course of the 1993–1994 Restructuring Plan was effected in the EC Decision 94/259/ECSC of April 12, 1994. We found no evidence at verification that there was any further debt forgiveness or grants provided as part of the 1993–1994 Restructuring Plan beyond the assistance outlined in the April 12, 1994 EC decision. We therefore determine that these programs do not exist.

D. Personnel Retraining Grants Under Law 675/77

The GOI reported, and we verified, that personnel retraining grants provided under Law 675/77 were terminated in 1987. The government stated that the resources provided under this program were allocated over the years 1981 through 1987. The GOI reported that no other law providing personnel retraining grants or financial allocations under Law 675/77 have been approved since 1987.

E. VAT Reductions Under Law 675/77

The GOI reported, and we verified that, the tax reductions referred to in Section 18 of Law 675 of August 12, 1977, were terminated effective March 29, 1991. Pursuant to Section 14(3) of Law 64 of March 1, 1986, Section 18 of Law 675/77, applied for a period of five years from the date of promulgation of the law.

F. Grants to RIVA/ILP

Interested Party Comments

The case brief submitted by the GOI addresses, what they consider to be, errors and omissions contained the in the GOI's verification report issued by the Department on November 12, 1999. Principally, they state the errors concern the liquidation of Finsider and the assistance provided by IRI in connection with the liquidation. The GOI also states that no subsidies passed through to the new owner of ILP upon its privatization in 1995, and that failure by the Department to recognize this fact would be inconsistent with U.S. obligations under the WTO Agreement. With regard to the GOI's statement on the privatization of ILP, we address the issue of privatization in *Comment 14* below. Because the other comments made by the GOI are not substantive arguments, we have not addressed them separately.

Palini & Bertoli did not submit any comments, therefore, when we refer to ''respondents'' below, we are referring to ILVA/ILT, except for *Comment 14* where we refer to ILVA/ILT and the GOI.

Comment 1: Use of ILVA's Verified 1998 Sales

Respondents argue that the Department in calculating the final CVD rates should use the correct and verified 1998 sales denominator. They state that at the time of the preliminary determination ILVA (*i.e.*, (new) ILVA) had not completed its official trial balance for 1998. When preparing for verification, using the finalized trial balance, ILVA found that the sales denominator submitted earlier to the Department was incorrect. Respondents note that the Department confirmed the correct sales denominator at verification, and therefore, that sales denominator should be used in the final determination.

Department's Position: We agree with the respondents that the Department should use ILVA's verified 1998 sales figure as the denominator to calculate the final CVD rates. We verified the correct 1998 sales figure by reconciling that amount to ILVA's completed trial balance which was examined at verification. Therefore, we have used ILVA's corrected 1998 sales denominator in the final determination.

Comment 2: Average Useful Life of Assets

Respondents provided four tables illustrating its proposed company-specific AUL calculations for ILVA's (*i.e.*, (new) ILVA) and ILT's assets, both separately and in combination. Both respondents and petitioners have focused their arguments on two of the four tables. The primary difference between the AUL calculations contained in each of these two tables is the treatment of the 1993 write-down of ILVA's assets. The first calculation presents a simple division of the annual average gross book values of the depreciable fixed assets by the aggregated annual charge to accumulated depreciation over a ten-year period (calculation 1). The second calculation adjusts the figures contained in the first calculation to reduce the gross book values by the amount of write-downs that occurred in connection with the 1993–94 restructuring and demerger of ILP from the (old) ILVA (calculation 2).

According to respondents, they provided the Department an inadequate explanation of ILVA's AUL worksheets prior to the *Preliminary Determination*, and, as a result, the Department relied on a worksheet (calculation 1) that substantially overstated the value of ILVA's depreciable assets. Respondents further maintain that, as demonstrated at verification, using the correct numbers from the correct worksheet yields an AUL for the renewable physical assets of ILVA and ILT of approximately 11 years.

Respondents state that this 11-year AUL not only accords with Generally Accepted Accounting Principals (GAAP) and is consistent with ILVA's financial statements, but also reflects precisely the type of normalizing adjustment required by the Department for companies that have recorded asset write-downs as per the preamble to the Department's final CVD Regulations, (see 63 FR at 65397). Respondents maintain that because ILVA made the normalizing adjustment, the Department should use this 11-year AUL from calculation 2 in its final determination. According to respondents, the AUL calculation, which was provided by respondents and used by the Department in its preliminary determination does not produce an AUL using actual asset values, since it disregards the write-downs of 1993. In other words, this calculation does not include the normalizing adjustment for the asset write-down, and as a result seriously distorts the AUL calculation. Respondents also claim the Department cannot accept the calculation 1 result, because it omits the normalizing adjustment for the asset write-down and the only purpose served by calculation 1 was to illustrate the impact of the 1993 write down on the asset values and depreciation recorded in calculation 2.

Petitioners contend that calculation 1 provides the closest approximation to the AUL methodology established by the Department in 19 CFR 351.524(d)(iii) and that this calculation produces an AUL of assets that does not differ by a year or more from the 15 year period provided for in the IRS tables. Therefore, petitioners request that the Department use the AUL established by the IRS as it did in the preliminary determination.

Petitioners contend that adjusting the asset values to account for the extraordinary write-downs in the value of ILVA's fixed assets in 1993 due to the liquidation of ILVA in connection with the 1993–94 restructuring has the effect of distorting the AUL calculation in a manner that makes the calculation unreliable for purposes of determining ILVA/ILT's company-specific AUL. Petitioners cite the preamble to the current regulations (*see* 63 FR at 65396) to support their contention that the company-specific AUL calculation is not appropriate ''* * * for companies that have been sold and that it presents problems when a company revalues its assets, for example, as a result of declaring bankruptcy.''

Petitioners cite *Steel Wire Rod from Germany* to support the contention that whether or not an asset write-down is done in accordance with GAAP is not necessarily the determining factor when examining whether these write-downs should be reflected in the average annual gross value of fixed assets in the AUL calculation. *See Final Affirmative Countervailing Duty Determination: Stainless Steel Wire Rod from Germany*, 62 FR 54990, 54999 (October 22, 1997) (*Steel Wire Rod from Germany*). Petitioners state that the asset write-down adjustment does not represent a reasonable estimate of the life of equipment at the time it was purchased, but instead ILVA/ILT 's calculation represents a mixture of the average useful life of the assets and the remaining useful life of assets after the revaluation. They further state that a company-specific AUL may be inappropriate when the company under investigation has faced recent changes in ownership or bankruptcy.

Finally, both respondents and petitioners argue that the country-wide AUL information provided by the GOI should not be used by the Department.

Department's Position: Under 19 CFR 351.524(d)(2), the Department presumes that the AUL set out in the IRS's 1977 Class Life Asset Depreciation Range System is the appropriate allocation period by which to allocate non-recurring subsidies, and the burden is placed on the party contesting these AULs to establish that the IRS tables do not reasonably reflect the company-specific AUL. In addition, the contesting party must demonstrate that the company-specific AUL differs significantly from the AUL in the IRS tables.

It is clear from the preamble to the CVD Regulations that, based on the Department's experience, using a company-specific AUL in situations where there have been major asset revaluations in connection with bankruptcy poses significant problems: ''We have found that the method [i.e., company-specific AUL calculation] may not be appropriate for companies that have been sold and that it presents problems when a company revalues its assets as a result of declaring bankruptcy (*see, e.g., Steel Wire Rod from Germany*, 62 FR at 54990 (October 22, 1997)).'' *See* CVD Regulations, 63 FR at 65396. In addition, the preamble states: ''It may also be necessary to make normalizing adjustments for factors that distort the calculation of an AUL. We are not in a position at this time to provide additional detail in the regulation itself on when we will make normalizing adjustments and how such adjustments will be made because the types of necessary adjustments will likely vary based on the facts of a particular case. However, certain obvious normalizing adjustments that come to mind are situations in which a firm may have charged an extraordinary write-down of fixed assets to depreciation, or where the economy of the country in question has experienced persistently high inflation.'' *See Id.*, at 65397.

With regard to this last statement from the preamble, we disagree with respondents that adjusting the AUL calculation for the asset write-downs, as was done in calculation 2, is the normalizing adjustment called for in the regulations. Respondents misread the regulations; it is precisely the existence of a massive asset write-down that requires a ''normalizing adjustment'' in the first place. We also find the distinction drawn between Saarstahl's situation in *Steel Wire Rod from Germany* and ILVA/ILT by respondents to be uninformative. There is little substantive difference between a situation where a company acquires assets from another company then revalues them at acquisition cost and a situation where assets are revalued before the transfer with the new owner carrying the assets on its books at the new revalued amount.

The basic point being made in the Department's regulations is that the basis of a company-specific AUL calculation is called into question when a situation exists such as the situation we are currently facing with ILVA/ILT, *i.e.*, numerous changes in ownership, a massive asset write-down, and bankruptcy. We do not agree with respondents that the only issue here is one of consistency between the numerator and the denominator in the company-specific calculation. The larger issue is whether we should depart from the IRS asset depreciation schedules. We do not find the fact that the 1993 asset write-downs were in accordance with GAAP to be particularly persuasive. The AUL calculation is an attempt to derive the average useful life of renewable physical assets. Whether or not it is in accordance with GAAP, the accounting treatment of asset values, which is usually done for tax purposes, does not necessarily attempt to accurately reflect the physical life of a particular asset. Because there are so many different ways to calculate asset values for tax purposes, the IRS constructed its tables to ensure consistency. There is a tendency on the part of the Department to rely on the IRS tables because, as is stated in the preamble to the countervailing duty regulations: ''In our experience, we have found that for most industries and most types of subsidies, the IRS tables have provided an accurate and fair approximation of the AUL of assets in the industry in question. * * *'' *See* CVD Regulations, 63 FR at 65396. In other words, the presumption that the IRS tables do not reflect the actual physical life of an asset for a particular company is not an easy one to overcome. In our view, respondents have failed to meet this threshold.

As noted above, respondents have provided four different AUL calculations, all with different results. By respondents' own admission, very little, if any explanation of how these calculations were done was provided until relatively late in the case. Respondents have argued that the main issue in the AUL calculation for this investigation is a simple matter of consistency between the numerator and the denominator. Respondents argument that their calculation 2, which takes the asset write-downs into account in both the asset value and depreciation, is the only reliable calculation is unpersuasive. Calculation 1, which we relied upon in the Preliminary Determination, is flawed according to respondents, because the asset values do not reflect the write-down while depreciation does reflect the write-down. Since by respondents' own admission, calculation 1 is flawed, we are rejecting calculation 1 as a basis for the company-specific AUL.

With regard to the Italian country-wide AUL, 19 CFR 351.524(d)(2)(iii) states that ''A country-wide AUL for the industry under investigation will not be accepted by the Secretary unless the respondent government demonstrates that it has a system in place to calculate AULs for its industries, and that this system provides a reliable representation of AUL.'' The GOI has not met this burden, nor have respondents argued that they have.

We therefore reject respondents company-specific AUL calculation and the country-wide depreciation information provided by the GOI, and have used the IRS tables for purposes of determining the period over which to allocate non-recurring subsidies.

We note that in the 1993 *Certain Steel* cases, our practice was to use the IRS tables to allocate non-recurring subsidies over time. Subsequent to that case, the Court overturned over use of the IRS tables in favor of company-specific rates. *See* British Steel plc v. United States, 879 F. Supp. 1254 (CIT 1995) and British Steel plc v. United States, 929 F. Supp. 426, 439 (CIT 1996). Under the current regulations, we have decided to revert to the IRS tables as a rebuttable presumption. In a 1997 Italian investigation, while we did attempt to calculate a company-specific AUL, we were unable to do so and used a surrogate AUL instead. *See Wire Rod from Italy*, 63 FR 40477.

While our preference is to apply the same AUL to the same subsidies across cases, we have not been able to do that in Italy due to the changes in our allocation methodology mandated by the Court and our subsequent decision to use the IRS table as a rebuttable presumption. This is the first Italy case subject to the new regulations. Accordingly, we are applying the regulatory standard to determine the AUL.

Comment 3: 1984 Debt Transfer Was Not a Countervailable Event

Respondents disagree with the Department's classification of the 1984 debt transfer from Italsider to Finsider as being equivalent to a government grant. They note that, under section 771(5)(D) of the Act, the Department can countervail a transfer of debt only if it involves a financial contribution from the government.

In 1984, debts were transferred from Italsider's balance sheet to that of Finsider, which under the sole shareholder provision of the Italian Civil Code, had legal responsibility for all debts of Italsider. Respondents contend that the debts remained fully in effect, but that Finsider now had direct rather than indirect responsibility for their payment. They argue that IRI made no financial contribution in 1984, by allowing the transfer of debt from Italsider to Finsider. Respondents point out that the Department itself recognized that the transfer ''merely shifted assets and debts within a family of companies, all of which were owned by Finsider.'' They submit that it would be double-counting to countervail both the 1984 debt transfer and the subsequent forgiveness of the same debt through the liquidation of the Finsider Group in 1988. Since no debt was forgiven in 1984, the Department has no legal or factual justification to countervail the 696.4 billion lire of debt which was transferred within the Finsider Group.

Petitioners urge the Department to continue to use facts available to make its finding with respect to the debt forgiveness provided under the 1981 Restructuring Plan. They state that, despite numerous requests, the GOI failed to provide to the Department the necessary information regarding the 1984 assumption of debt and 1985 debt forgiveness. Therefore, the Department should continue to rely on information provided in the petition and *Certain Steel* Products from Italy (see 58 FR at 37329–30), and determine that the 1984 assumption of debt and 1985 debt forgiveness are countervailable subsidies.

Department's Position: We disagree with ILVA/ILT that IRI provided no financial contribution in 1984, by allowing the transfer of debt from Italsider to Finsider. Under section 771(5)(D)(i) of the Act, the GOI provided a financial contribution when it allowed Finsider to assume the debts Italsider owed to IRI. The benefit provided to Italsider was debt forgiveness. *See* section 351.508 of the CVD Regulations.

We also disagree with respondents' argument that it would be double-counting to countervail both the 1984 debt transfer and the subsequent forgiveness of the same debt through the liquidation of the Finsider Group in 1988. Respondents have not demonstrated that the 696.4 billion lire which was transferred to Finsider in 1984, was part of the 1,364 billion lire of debt forgiveness which IRI provided to Finsider in 1989. As noted above, we requested information from respondents on several occasions regarding the debt assumption and debt forgiveness provided under the 1981 Restructuring Plan. The burden is on respondents to provide to the Department the necessary information with which to conduct a complete analysis. Absent information regarding how the 1984 debt transfer is connected to the 1989 debt forgiveness, the Department must rely on the facts available.

Therefore, we affirm our *Preliminary Determination* that, based on the facts available, the 696.4 billion lire transferred to Finsider in 1984, was tantamount to debt forgiveness because respondents have not demonstrated that it was part of Finsider's 1,364 billion lire debt which IRI forgave in 1989.

Comment 4: Allocation of Benefits From the 1981 Plan Using the Correct Asset Ratios

Respondents assert that the Department has incorrectly allocated 100 percent of the countervailable benefits received by Italsider and Nuova Italsider to ILP. During verification, the Department reviewed the separation of certain carbon steel flat product assets that occurred between 1985, and the creation of ILP on January 1, 1994, verifying that ILP inherited only 88.29 percent of the total fixed, productive assets of Nuova Italsider. *See ILVA/ILT Verification Report*, at Exhibit 1985Rest-1.

Respondents submit that under, long-standing policy, the Department apportions benefits to successor and spin-off companies on the basis of asset ratios. As noted in the 1993 General Issues Appendix, to calculate benefits, the Department divides ''the value of the assets of the spun-off unit by the value of the assets of the company selling the unit.'' *See* GIA, 58 FR at 37269. Therefore, consistent with this established policy, the Department should attribute benefits in accordance with the ratio of assets that actually traveled with ILP.

Petitioners argue that the Department should reject the information regarding the assets of Nuova Italsider because, not only was it untimely, but is also inconsistent with other evidence on the record. Section 351.301 of the Department's procedural regulations mandates that ''a submission of factual information is due no later than * * * seven days before the date on which the verification of any person is scheduled to commence.'' They emphasize that verification was the first time ILVA/ILT mentioned a 1985 Restructuring Plan and the transfer of Nuova Italsider's assets. No such plan was discussed in the GOI's questionnaire response, though the Department requested information on ''the restructuring of the Italian steel industry from 1981 through 1998,'' including ''a detailed description of each restructuring plan.'' See Department's March 19, 1999 questionnaire, at Section II–1, Part I, Question A.1.

Petitioners add that, should the Department decide to consider this new information, it should not reduce the subsidy benefit to (new) ILVA (*i.e.*, formerly named ILP) from the 1981 Restructuring Plan because the information provided by ILVA/ILT does not clearly establish that any productive units of Nuova Italsider were spun-off in 1985. They argue that the mere fact that assets related to certain plants were not listed as part of the assets of ILP does not establish that they were spun-off as productive units in 1985. In fact, there is record evidence that two plants were in fact closed down as part of the 1988 and 1993–94 Restructuring Plans. *See* EC Decision 89/218/ECSC of December 23, 1988, and EC Decision 94/259/ECSC of April 12, 1994.

ILVA/ILT rebuts petitioners' arguments, stating that there was no restructuring plan in 1985, and that the company has never maintained otherwise. Respondents explain that ILVA/ILT's verification exhibit simply traces the disposition of assets under the 1988 and 1993–94 restructuring plans that Italsider and Nuova Italsider had owned prior to 1987, but which ultimately did not travel to ILP. *See ILVA/ILT Verification Report*, at Exhibit 1985Rest-1. They state that the asset allocation arose for the first time in the *Preliminary Determination*, when the Department incorrectly presumed that 100 percent of the assets of Nuova Italsider traveled to ILP.

Department's Position: Information regarding the percentage of Nuova Italsider's assets which were transferred to ILP was first presented to the Department during ILVA/ILT's verification. Thus, the Department did not have sufficient time between the presentation of the information and this final determination to permit a thorough examination of the accuracy of the data. In addition, information necessary to determine the amount of productive assets which remained with Nuova Italsider was not placed on the record of this investigation. Therefore, in accordance with section 351.311(c)(2) of the Department's procedural regulations, we have deferred consideration of the percentage of Nuova Italsider's assets which were transferred to ILP. If this investigation goes to order and an administrative review is requested, we will, at that time, examine this issue again if complete information is provided in that review.

Comment 5: Use of the Verified Asset Ratio to Apportion Finsider Benefits From the 1988 Restructuring Plan

Respondents state that, at the *Preliminary Determination*, the Department allocated the countervailable benefits from the 1988 Restructuring Plan in accordance with an asset allocation table prepared by ILVA/ILT which used the best information available prior to verification (see 64 FR at 40423). At verification, IRI, the owner of both Finsider and (old) ILVA, provided to the Department a more precise allocation of assets between Finsider and (old) ILVA based on IRI's consolidated financial statements. *See GOI Verification Report*, at 7 and *ILVA/ILT Verification Report*, at 10. Respondents argue that the Department not only verified the asset ratio using IRI's consolidated statements, but also tied the results to (old) ILVA's consolidated financial statements. Therefore, in line with the Department's long-standing policy of allocating benefits in accordance with asset ratios, respondents argue that the Department should use the correct and verified ratio of 51.2 percent to allocate the benefits of the Finsider restructuring to (old) ILVA.

Petitioners assert that the Department's methodology in the *Preliminary Determination* with respect to the percentage of debt forgiveness from the 1988 Restructuring Plan attributable to (old) ILVA is incorrect. They argue that only where a portion of Finsider's assets were transferred to a productive unit other than (old) ILVA, should the Department allocate a portion of the subsidy amount to those assets. They note that this approach was taken by the Department in *Plate in Coils from Italy* (*see* 64 FR at 15523) and is consistent with the opinion of the CIT in *British Steel Corp.* v. *United States*, 605 F. Supp. 286 (1985) (*British Steel*). In that decision, the court ruled that ''the competitive benefit of funds used to acquire assets does not cease upon the assets' premature retirement, but rather such benefit continues to contribute to the firm's manufacture, production, or exportation of products accomplished by the firm's remaining assets.'' *See British Steel*, at 296.

However, if the Department insists on calculating the percentage of Finsider's assets actually transferred to (old) ILVA as a result of the 1988 Restructuring Plan, petitioners urge the Department to reject the estimate used in the *Preliminary Determination* and the estimate provided at verification. They contend that these estimates are incorrect because: (1) the estimate used in the preliminary analysis does not account for the additional assets transferred to (old) ILVA in 1990, as part of the 1988 Restructuring Plan, and (2) neither calculation accounts for the write-down in the value of Finsider's assets which took place in 1989. Therefore, if the Department continues to use ILVA/ILT's calculations for the final, the amount of debt forgiveness that benefitted (old) ILVA will be substantially underestimated.

Petitioners claim that it would be inappropriate to use net asset values from the end of 1989 or 1990, to estimate the assets transferred from Finsider to (old) ILVA, because the asset values were substantially written down in 1989, in connection with the restructuring. To compare asset values after the write-down (those assets in (old) ILVA) with asset values before (those assets remaining in Finsider) will inevitably lead to the incorrect conclusion that a substantial amount of Finsider's assets were not transferred to (old) ILVA.

In their rebuttal brief, ILVA/ILT submits that petitioners have confused the benefit of liquidation, *i.e.*, debt coverage, with the allocation of this benefit. They contend that liquidation provides a benefit because it enables a spun-off company to emerge without the unsustainable debt burden that had deprived the company in liquidation of viability; it is the liquidated company that lacks viability, not the individual assets. The viability of the assets of the Finsider Group was demonstrated both by the audited financial statements of 1988, and by the subsequent success of the liquidated Finsider Group in generating revenue from the sale of assets to offset its net debt coverage.

ILVA/ILT further states that since the benefit was received by the Finsider Group as a whole, the Department must allocate the benefit over the entire Group. As stated in the GIA, ''The amount of the potential pass-through subsidy is calculated by applying the ratio of the book value of the productive unit sold to the book value of the assets of the entire company at the time the productive unit is spun-off.'' *See* GIA, 58 FR at 37268. Accordingly, the Department must use a ratio that bases the asset values in the numerator (the assets of each successor) and the asset values in the denominator (all assets of the predecessor, before the spin-offs) on the same base year and the same valuation method. Respondents add that it is the Department's established policy to use book value in the last accounting period preceding the spin-offs, taken from the consolidated audited financial statements.

Department's Position: We reject the respondents' asset allocation calculation, which indicates that 51.2 percent of Finsider's assets were transferred to (old) ILVA. The calculation appears to take into consideration Finsider's asset value of December 31, 1988, prior to the write downs, and (old) ILVA's asset value after the write downs, and consequently derives an incorrect percentage of assets transferred. Record evidence indicates the opposite of ILVA/ILT's statement that ''assets were transferred from Finsider to ILVA at their written down value.'' We note in IRI's 1989 consolidated financial statement that Finsider's net fixed asset value for year-end 1988, was 8,023 billion lire. For year-end 1989, Finsider's net fixed asset value was 1,345 billion lire and (old) ILVA's was 3,910 billion lire. These amounts closely reconcile to those presented in the June 14,1989 McKinsey report[8] which indicates that the write down of assets occurred on January 1, 1989, after they were transferred to (old) ILVA on December 31, 1988. We learned at verification that Finsider transferred assets to (old) ILVA on December 31, 1988, in advance of the company's commencement of production as a steel company on January 1, 1989. *See GOI Verification Report*, at 6.

We further note that ILVA/ILT was not able to substantiate their claim that Finsider's assets were transferred to (old) ILVA at their written down value. In support of their statement, respondents simply translated a paragraph from Finsider's 1989 financial statement. ILVA/ILT did not place information on the record which clearly indicates when the asset write downs were taken or the method by which the assets were revalued. In particular, at verification, ILVA/ILT did not demonstrate that Finsider's net fixed asset value of 8,023 billion lire as of December 31, 1988, was the value of the company's assets post-write downs.

On the basis of the record evidence, for purposes of this final determination, we have recalculated the percentage of Finsider's assets transferred to (old) ILVA using pre-write down asset values. To calculate the percentage of assets transferred to (old) ILVA, we used information from the June 14, 1989 McKinsey report which the GOI submitted to the Department on July 9, 1999. The report indicates that Finsider as of December 31, 1988, had a net fixed asset value of 8,610 billion lire. Of Finsider's assets, 6,140 billion lire of the assets were conferred to (old) ILVA on December 31, 1988. On January 1, 1989, (old) ILVA's assets were written down. This information demonstrates that prior to the write downs, 71.31 percent of Finsider's assets were transferred to (old) ILVA.

We agree with petitioners that it is necessary to add to the 71.31 percent asset figure the assets transferred to (old) ILVA during 1990. During 1990,

[8] This report was submitted to the Department by the GOI on July 9, 1999.

705 billion lire in assets were transferred to (old) ILVA. *See* (old) ILVA's 1990 Annual Report, at 46, contained in the February 16, 1999 Petition, at Volume VIII, Exhibit 4 and 5. Because it is likely that the 705 billion lire is based on asset values after the write-downs of 1989, we have assumed that these assets were written down by a similar percentage as (old) ILVA'' assets on January 1, 1989, (*i.e.,* 39.9 percent). Accordingly, we have increased the value of the assets transferred during 1990, to their pre-write down value of 1,173 billion lire. We then summed the 1,173 billion lire and the 6,140 billion lire assets values, to arrive at the total asset value of 7,313 billion lire which was transferred to (old) ILVA. Therefore, we determine that, in total, 84.94 percent of Finsider's assets were transferred to (old) ILVA.

Respondents are incorrect in arguing that the methodology to be applied here is the ''spin-off'' methodology described in the GIA. We do not consider the creation of (old) ILVA to be a ''spin-off'' from Finsider, because they were still government-owned companies. Normally, in such a situation, we would not separate the untied subsidies within the corporate group. However, the facts of this case, *i.e.*, numerous restructurings and assumption of liabilities by the government which should have been taken by each new company created, dictate that we must apportion the subsidies provided to each of the new companies created. The most reliable way to determine the percentage of subsidies provided to the predecessor companies that are attributable to the successor companies is through the value of the assets taken by each company.

Comment 6: Debt Forgiveness Provided From the Reserve Fund

Petitioners claim that, in the *Preliminary Determination*, the Department did not countervail the 1,568 billion lire in net losses which Finsider realized in 1989, stating that it would seek additional information in regard to Finsider's indebtedness to IRI (*see* 64 FR at 40422–23). While the Department notes in its verification report that Finsider is still officially in liquidation, the fact that Finsider has not paid IRI for the debt a decade after the 1988 restructuring should be sufficient for the Department to determine that this debt has been forgiven. *See GOI Verification Report*, at 8. They state that since the 1988 restructuring, Finsider has been a shell corporation that assumed the liabilities which were stripped from those assets transferred to (old) ILVA. Accordingly, the Department must countervail the 1,568 billion lire debt forgiveness as benefitting (old) ILVA in 1990, the year in which it was identified, as an amount that would not be repaid to IRI.

In their rebuttal brief, ILVA/ILT states that the reserve fund involved a suspension rather than a forgiveness of debt. *See GOI Verification Report*, at 8 and ILVA/ILT's September 3, 1999 QR, at Exhibit 1. They emphasize that the record demonstrates that no forgiveness of the 1,568 billion lire debt has yet occurred and that Finsider, in liquidation, continues to possess assets that may enable it to cover the debt without recourse to IRI's reserve. *See GOI Verification Report*, at 9. Because IRI has not forgiven Finsider's remaining debt, and ultimately may not need to forgive any of this debt, they argue that no countervailable forgiveness has yet occurred.

Department's Position: On the record of this investigation, the GOI has reported that in 1988, IRI established a fund of 2,943 billion lire to cover Finsider's losses while in liquidation. *See* GOI's July 8, 1999 QR, at Program 4, Question 3a and *GOI Verification Report*, at 8. The government stated that the fund equaled the total amount of assistance IRI expected to provide to Finsider during the liquidation process. IRI, which earlier extended 2,943 billion lire in loans to Finsider, questioned whether Finsider would default on the loans, and therefore, established the reserve fund to cover the outstanding loans. *See GOI Verification Report*, at 8.

Finsider realized losses of 1,364 billion lire in 1988. To prevent Finsider from becoming insolvent, IRI utilized 1,364 billion lire of the fund in 1989, to forgive debts Finsider owed to it. In 1989, Finsider realized losses of 1,568 billion lire. Because the purpose of the reserve fund was to cover losses that Finsider would realize while in liquidation, IRI should have, but did not, cover the 1,568 billion lire of losses in 1990, by forgiving debt of an equivalent amount.

At verification, we learned that Finsider, which remains in liquidation, still had losses of 1,568 billion lire carried forward in its financial statement of December 31, 1998. Likewise, within IRI's financial statement as of year-end 1998, IRI still maintained a balance of 1,568 billion lire in the reserve fund. *See GOI Verification Report*, at 9. IRI officials explained that the agency expects Finsider to repay all outstanding debts with revenue realized through the sale of remaining assets. However, until the liquidation is officially terminated, IRI must keep the fund on its books in case any outstanding debts cannot be covered with cash earned from the sale of assets. *See Id.*

We analyzed whether, when Finsider realized losses of 1,568 billion lire in 1990, IRI expected to receive payment against the debts owed to it by Finsider. Based on the record evidence, we determine that IRI did not expect Finsider to pay the 1,568 billion lire debt. First, in 1988, IRI created a fund with the sole purpose to cover the losses which Finsider would realize while in liquidation. Second, IRI utilized 1,364 billion lire of the fund to cover losses in 1989, by forgiving debt of an equivalent amount. In addition, respondents did not submit information on the record regarding the value of the assets which remained in Finsider as of December 31, 1989, to demonstrate that Finsider had viable assets which it could sell to obtain cash to pay IRI. On the basis of these facts, we determine that in 1990, IRI had no expectation that Finsider would pay the 1,568 billion lire debt. Therefore, for this final determination, we find that in 1990, IRI provided to Finsider debt forgiveness of 1,568 billion lire.

Comment 7: IRI's Purchase of Finsider Shares

Respondents contend that IRI's purchase in 1990, of (old) ILVA's shares from Finsider, Italsider, and Terni in liquidation was step one of a two-step asset purchase. They state that the liquidators of the Finsider Group used a two-step process to raise cash for the benefit of creditors by selling assets of the liquidated companies. In step one, Finsider, Italsider, and Terni in liquidation sold assets to (old) ILVA in exchange for shares of the company. In step two, Finsider, Italsider and Terni in liquidation sold their shares in (old) ILVA to IRI in exchange for cash at the same value. Respondents contend that this two-step sale enabled the companies in liquidation to liquidate productive assets at the assets' appraised market value for the benefit of their creditors.

They argue that, because IRI's purchase of shares was an asset sale at market value, the Department has no legal or factual basis for countervailing the transaction. They stress that this process was not ''tantamount to debt forgiveness,'' stating that IRI simply purchased the shares in (old) ILVA which Finsider, Italsider and Terni in liquidation had received in exchange for the assets which they transferred to (old) ILVA. IRI paid the assets' appraised market value to Finsider, Italsider and Terni in liquidation. Under section 771(5)(E)(iv) of the Act, a purchase of assets by or for the government provides a countervailable benefit only ''if such goods are purchased for more than adequate remuneration'' and that adequate remuneration ''shall be determined in relation to prevailing market conditions.''

Respondents state that the appraisal of the assets in question was based on prevailing market conditions, and utilized the comprehensive market assessment of McKinsey, as described in ILVA/ILT's September 3, 1999 QR. Therefore, they argue that no countervailable benefit was conveyed because the remuneration provided by the government for the assets was adequate.

Petitioners argue that the McKinsey study was not an analysis of whether (old) ILVA in 1990, was a good investment. Rather, the study was an analysis of the viability of the 1988 Restructuring Plan, *i.e.*, whether the restructuring of Finsider into (old) ILVA would meet the objectives set out by the GOI and the EC. At verification, the Department learned that ''[t]he consulting firm of McKinsey & Company was hired to examine whether the creation of ILVA S.p.A. would conform with the EC's trade and competition rules.'' *See GOI Verification Report*, at 5. No analysis of the risk of an investment in (old) ILVA versus the potential return of such an investment is contained in the study, nor any comparison to the expected return of alternative investment opportunities, as is required under the Department's practice.

Petitioners add that there is no basis for concluding that the GOI was acting as a normal investor in buying (old) ILVA's shares in 1990. They highlight (old) ILVA's negative return on equity for the years 1986, 1987, and 1988, and conclude that no private investor would have made an investment in such a financially unsound company. On the basis of this information, the Department should determine that (old) ILVA was unequityworthy in 1989, and that IRI's purchase of (old) ILVA's shares was equivalent to debt forgiveness.

In their rebuttal brief, ILVA/ILT dispute petitioners' argument that (old) ILVA was unequityworthy in 1989. They state that. contrary to petitioners' calculation, which appears to have been based on data for Finsider in liquidation and not (old) ILVA, (old) ILVA had a return on equity of 7.6 percent for 1989. The McKinsey report, which they contend does satisfy the Department's requirements for investment studies, projected a level of profitability of 12.8 percent in 1990, for (old) ILVA.

Department's Position: As in our *Preliminary Determination*, we continue to find that IRI's purchase of (old) ILVA's shares is countervailable. It is the Department's position that prior to purchasing shares of a company, it is the usual investment practice of a private investor to evaluate the potential risk versus the expected return. This includes an objective analysis of information sufficient to determine the expected risk-adjusted return and how such a return compares to that of alternative investment opportunities of similar risk. In the July 23, 1999 questionnaire and at verification, we asked the GOI and ILVA/ILT to provide all feasibility studies, market reports, economic forecasts, or similar documents completed *prior to* (old) ILVA's share purchase, which related to the future expected financial performance of the company.

We disagree with respondents that IRI's purchase of (old) ILVA's shares in 1990, was preceded by a comprehensive and objective financial analysis of (old) ILVA. We find that the McKinsey report which was commissioned by the EC and the GOI, examined not the expected financial performance of (old) ILVA, but assessed the viability of the government's ''ILVA Steel Plan'' (*i.e.*, the 1988 Restructuring Plan) for the period 1988 to 1990. The scope of the study was to ''examine the ILVA Steel Plan trying to verify consistency with the Italian government proposals' and focused on (old) ILVA's steel making activities to ensure compliance with the EC's trade and competition rules. *See GOI Verification Report*, at 5. We note that the McKinsey team's evaluation involved: (1) reviewing the ILVA plan with the managers to ensure a full understanding of the underlying programs; (2) validating the feasibility of the plan using sound management principles; and (3) verifying EC mandated guidelines for price/cost squeeze and profitability. *See* McKinsey Report, ''Evaluating the Viability of the ILVA Steel Plan,'' of August 5, 1988, in the GOI's July 8, 1999 QR.

We determine that the McKinsey report did not incorporate the type of objective, quantitative analysis that an investor would require prior to a share purchase to evaluate the potential risk versus the expected return of an investment in (old) ILVA. There is no financial forecasting of (old) ILVA which would inform the investor of the viability of the company. Respondents discuss in their case brief that the McKinsey report evaluated (old) ILVA's ability to realize a minimum level of profitability of 12.8 percent in 1990. *See* ILVA/ILT's November 23, 1999 Rebuttal Brief, at 6. However, respondents have taken that ''probability'' out of context. In fact, the report states, ''[T]he overall plan meets CEC [EC] guidelines for a 2.5 percent annual price/cost squeeze and exceeds guidelines for a minimum MOL [operating margin improvement]-profitability level in 1990 of 12.8 percent of revenue.'' *See Id.* As discussed in the report, the MOL level of 12.8 percent of consolidated revenues is the target level that (old) ILVA had to reach, as a whole, in order to meet the EC guidelines for viability, and not the company's projected profitability. The report further states that when calculating (old) ILVA's MOL profitability-level, the McKinsey team had no confirmation of (old) ILVA's official financial plans. Therefore, they assumed a normal capital structure for (old) ILVA in their evaluation and urged the government to create a sound financial base for the new enterprise. *See Id.*, at section ''1990 Profitability Meets CEC Guidelines.''

The facts on the record indicate that IRI, which committed itself on January 1, 1989, to purchase (old) ILVA's shares from Finsider, did not have sufficient financial data which would have allowed it to evaluate the potential risk versus the expected return in an investment in (old) ILVA. Further, at the GOI's verification, we learned that under Italian law, a company in liquidation must sell all of its assets to repay outstanding debt. *See GOI Verification Report*, at 9–10. IRI, which wanted to remain in the steel business, committed itself on the day (old) ILVA was created, to purchase from Finsider the shares of the company. *See Id.* With the cash from the sale, Finsider repaid a portion of its outstanding debts. *See Id.* Therefore, on the basis of the record evidence, IRI did not act like a private investor when it decided to purchase (old) ILVA's stock on January 1, 1989. The purpose of the share purchase was to provide to Finsider with cash to repay debts.

Comment 8: Finsider Received No Countervailable Operating Assistance During Its Liquidation

Respondents argue that the Department should not countervail the amount of 738 billion lire which was the ceiling the EC imposed on IRI's coverage of losses incurred during the liquidation of Finsider. They contend that IRI provided no such assistance apart from the 1,364 billion lire in loss coverage which the Department has countervailed separately. They point out that IRI demonstrated that the global assistance amount did not exceed 1,364 billion lire, as documented in the relevant financial statements. *See GOI Verification Report*, at Exhibits Plan 1988/1–6.

Petitioners argue that the Department should affirm its preliminary determination for the following reasons: One, the GOI claimed that no assistance beyond the 1,364 billion lire in debt forgiveness from 1989, was provided by IRI; however this statement made at verification conflicted with the GOI's own July 8, 1999 QR. *See GOI Verification Report*, at 10, and GOI's July 8, 1999 QR, at Part II, P.S. Q. Program 4. Two, the GOI could not provide any documentation to support its claim that IRI only provided 1,364 billion lire in assistance. *See GOI Verification Report*, at 10.

Department's Position: In the *Preliminary Determination*, we discussed the ambiguous information on the record regarding the additional financial assistance, if any, the GOI provided to Finsider in liquidation (*see* 64 FR at 40423). We preliminarily found, based on information provided by ILVA/ILT, that IRI provided 738 billion lire to Finsider to cover costs and losses in 1989. *See Id.* However, we stated that we would seek further clarification from the GOI and ILVA/ILT regarding all assistance provided under the 1988 Restructuring Plan.

We learned that through the 89/218/ECSC Decision of December 23, 1988, the EC authorized the disbursement of a maximum of 738 billion lire in additional financial assistance to Finsider to cover costs and losses realized in the liquidation process. However, because the cash received from the sale of Finsider's assets was greater than expected, IRI did not have to disburse to Finsider any portion of the 738 billion lire of aid authorized for closure costs and liquidation expenses. *See GOI Verification Report*, at 10 and *ILVA/ILT Verification Report*, at 11. At verification, we examined Finsider's and IRI's 1989 financial statements, in particular, sections where such assistance would have been recorded. We found no evidence that IRI provided any aid to Finsider in addition to the 1,364 billion lire in 1989. Therefore, on this basis, we determine that IRI did not provide to Finsider an additional 738 billion lire to cover closure costs and losses in 1989.

Comment 9: Allocation of the 1993 Restructuring Benefits Using the Consolidated Asset Values for the ILVA Group

Respondents contend that in the *Preliminary Determination*, the Department incorrectly allocated the benefits from the 1993–94 ILVA restructuring to ILP, AST and ILVA Residua. Though it is the Department's policy to allocate benefits to successor and spin-off companies by asset value, the Department did not use the actual consolidated asset values of all three companies as the denominator for its allocation of the 1993–94 benefits. Rather, the Department used the consolidated asset values only for ILP and AST. For ILVA Residua, the Department ''used the sum of the purchase price plus debts transferred as a surrogate for the viable asset value of the operations sold from ILVA Residua.'' See *Preliminary Determination*, 64 FR at 40424. They explain that by using the consolidated assets of ILP and AST, but not ILVA Residua, the Department distorted the allocation and exaggerated the benefits attributed to ILP from the restructuring.

The respondents stress that by using a surrogate value for ILVA Residua's assets, the Department erred in three fundamental respects: First, the Department had no basis in law or accounting to use a surrogate, because ILVA/ILT submitted the actual consolidated asset value for ILVA Residua as recorded in audited financial statements. Second, the surrogate was based not on year-end 1993 data, but on ''the purchase price plus debts'' of ''operations sold from ILVA Residua.'' *See Id.* These sales occurred after year-end 1993, and, in many cases, not until years later. In contrast, the ILP and AST assets used in the *Preliminary Determination* were from year-end 1993 financial statements. For purposes of consistency and accuracy, allocations of asset values must incorporate the value of all the assets at one common point in time. Third, respondents emphasize that the Department used as its surrogate the post-1993 purchases of assets from the unconsolidated ILVA Residua, which excluded the asset values of the many subsidiary companies that ILVA Residua sold in market transactions. They add that by using consolidated assets for ILP and AST (*i.e.*, including subsidiary companies owned by ILP and AST), but using a surrogate only for the unconsolidated ILVA Residua's assets (*i.e.*, excluding subsidiary companies), the Department significantly understated the asset value of ILVA Residua in comparison to ILP and AST as of year-end 1993.

Petitioners argue that the correct asset value for ILVA Residua is the price paid for each subsidiary sold plus the debts transferred. This approach reflects the fact that the debt forgiveness should only be allocated to the viable assets of (old) ILVA and not to any assets that were to be closed or otherwise ceased to be viable. *See Plate in Coils from Italy*, 64 FR at 15523.

They contend that this analysis is consistent with legal precedent with respect to subsidies provided for closure of inefficient plants. Petitioners cite *British Steel* in which the CIT ruled that subsidies used to close redundant facilities provide countervailable benefits to the remaining, productive assets of the recipient firm because ''redundancy funds and plant closures make the recipient more efficient and relieve it of significant financial burdens.'' *See British Steel*, at 293. They also reference the GIA, in which the Department states: ''* * * subsidies are not extinguished either in whole or in part when a company closes facilities. Rather, the subsidies continue to benefit the merchandise being produced by the company.'' *See* GIA, 58 FR at 37269.

It would not be appropriate to allocate the debt forgiveness to the total assets of ILVA Residua as of year-end 1993, as this would allocate benefits to assets that were closed or otherwise became non-viable following the restructuring. They emphasize that, at verification, the ILVA/ILT officials could not support their statement that all assets remaining in ILVA Residua were viable. *See ILVA/ILT Verification Report*, at 11. Therefore, the Department should continue to rely on the EC's 10th Monitoring Report for purposes of determining the viable assets remaining in ILVA Residua, and use that figure for purposes of allocating the debt forgiveness of the 1993–94 Restructuring Plan among ILP, AST and ILVA Residua.

Department's Position: We find that, given the information on the record, the most reliable asset value for ILVA Residua is the price paid for each subsidiary sold plus the debts transferred. It is the Department's practice to apportion otherwise untied liabilities remaining in a shell corporation to the new, viable operations that had been removed from the predecessor company. Therefore, consistent with our past practice, we have assigned a portion of these liabilities to ILP and AST based on the ratio of assets each company took to the total viable assets of all three companies, including ILVA Residua.[9] This approach is consistent with the methodology employed in the recent

[9] Because the ultimate objective of the 1993–94 Restructuring Plan was the privatization of ILP and AST, which were separately incorporated from (old) ILVA on January 1, 1994, we have no reason not to believe that the value of the assets which were transferred to ILP and AST were accurately assessed during the liquidation process.

stainless steel investigations. *See, e.g., Plate in Coils from Italy*, 64 FR at 15523.

As stated earlier in the notice, based on the record evidence of this investigation, the EC's 10th Monitoring Report is the only reliable information available to the Department to establish the value of those productive assets which remained in ILVA Residua at the point ILP and AST were separately incorporated. We disagree with respondents that the best source of data is the consolidated asset value for ILVA Residua as of December 31, 1993. Evidence on the record indicates that the asset value for ILVA Residua as of year-end 1993, is seriously flawed. At verification, the EC economist who monitored the restructuring and privatization of (old) ILVA stated that the ''balance sheets for December 31, 1993, provide only an estimate of ILVA in Liquidation's indebtedness which IRI would have to cover, the amount of debts to be transferred, etc.'' *See GOI Verification Report*, at 13. He also explained that the balance sheets of December 31, 1994, were the first audited financials of IRI and ILVA Residua since the commencement of the liquidation in the fall of 1993. *See Id.*

We examined ILVA Residua's 1994 annual report and noted the following statement pertaining to 1993, within the ''Report on the Management:'' ''In the financial statement for 1993, we pointed out how the opening of liquidation would require drawing up a balance sheet formulated not with values of normal operation but with values of estimated cost. The brevity of time available then and the complexity of the valuations to be executed in that meeting allowed putting together only a few limited adjustments of values for which sure elements of judgement were available.'' *See* ILVA Residua's 1994 Annual Report in the February 16, 1999 Petition, at Volume 8, Tab 11. In addition, at verification, we obtained a listing of the amount of assets from each ILVA Group company which were placed in ILVA Residua as of December 31, 1993. *See ILVA/ILT Verification Report*, at Exhibit 1993/94–4. Respondents claimed, but could not document, that all of the assets were viable. *See ILVA/ILT Verification Report*, at 11. As the auditor's opinion clearly indicates, the asset value for ILVA Residua, recorded in the company's financial statement as of December 31, 1993, was distorted, and respondents have submitted no evidence to substantiate their claim that the assets were accurately valued. As such, it is not appropriate to apportion the subsidies to ILVA Residua using the company's 1993 consolidated asset value. To determine the amount of liabilities from the 1993–94 Restructuring Plan, that should be apportioned to ILVA Residua, we must first determine the value of the productive assets that remained in ILVA Residua.

Given that the Department does not have the necessary asset values to make this determination from financial statements prepared at the point (old) ILVA's assets were demerged into ILP and AST, we consider that the EC report provides the only reliable information on the record to determine the viable assets which remained in ILVA Residua. The EC report provides a list of subsidiaries and shareholdings sold by ILVA Residua from 1993 through 1998, together with the sales price for each company and the debts transferred from ILVA Residua upon each sale. Respondents themselves note this fact in their case brief: ''The 10th EC Monitoring Report describes these sales [*i.e.*, ILVA Residua's assets sold in market transactions], which involved virtually all of ILVA Residua's consolidated assets.'' *See* ILVA/ILT's November 18, 1999 Case Brief, at 16. Moreover, the EC Monitoring Report notes that ''[t]he privatisation or the sale of shareholdings of all the companies formerly part of the ILVA Group (over 100 companies) is now practically completed,'' with only a negligible amount of assets remaining to be sold.

Therefore, to calculate the asset value of the viable operations, which were in ILVA Residua, we summed the cash price paid plus debts transferred at the time of their sale. We believe this approach provides a reasonable surrogate asset value because the newly sold company's books will, by the basic accounting equation of ''assets equal liabilities plus owners'' equity,'' reflect an asset value that is equal to the debts transferred plus the cash purchase price. The debts transferred become the liabilities in the new company's books, while the cash purchase price becomes the owners' equity. *See Plate in Coils from Italy*, 64 FR at 15523. Given the record evidence of this investigation, this calculation is the most reasonable estimate of the amount of viable assets that were left in ILVA Residua upon the separate incorporation of ILP and AST. However, should this investigation result in an order and an administrative review is requested, we will examine whether, at the point ILP and AST were separately incorporated, more accurate information can be obtained with regard to the value of those productive assets which remained in ILVA Residua.

Comment 10: Countervailable Debt Coverage Should Be Offset by Revenue From ILP/AST Sales

Respondents state that the Department's preliminary analysis, guided by the EC's 10th Monitoring Report, disregarded the EC's treatment of revenue from the sale of ILP and AST as an offset to debt coverage. They argue that, by overlooking this revenue offset, the Department overstated the net amount of debt coverage. The record of the case demonstrates the legal obligation of the GOI and IRI to use the revenue from the sale of ILP and AST for the benefit of ILVA Residua's creditors. *See GOI Verification Report*, at 14. Since revenue from the ILP and AST privatizations is no different from revenue generated by the sale of ILVA Residua's other productive enterprises, they argue that all revenue should be deducted from the gross liabilities of ILVA Residua prior to attributing any countervailable debt coverage to ILP.

In support of their argument, respondents note that the EC in its Decision 94/259 of April 12, 1994, at Article 3(2), states: ''The income obtained through the sale of the companies in the (old) ILVA Group shall be used in full to reduce the indebtedness of the group.'' Because the revenue from the privatizations was intended to reduce the debt coverage provided by IRI to ILVA Residua, the Department has no legal justification to exclude this revenue from its calculation of the net debt relief attributable to the liquidation process. Respondents add that under the Italian Civil Code, IRI had a legal obligation to the ILVA Group's creditors to apply the revenue from the subsequent privatizations of ILP and AST for the creditors' benefit.

They further state that the Department in the *Preliminary Determination* (*see* 64 FR 40424) recognized the revenue from asset sales by ILVA Residua as an offset to the countervailable debt coverage provided by the liquidation. Because no justifiable distinction can be drawn between the ILP and AST privatization revenue and the revenue from other asset sales, the Department should apply the 2,665 billion lire from the privatization of ILP and AST as an offset to the countervailable debt coverage attributed to the 1993–94 restructuring process.

Petitioners counter that the subsidy at issue is the amount of liabilities stripped from the operating company of (old) ILVA, which were placed in ILVA Residua, and not the amount of ILVA Residua's debts the GOI ultimately forgave or paid, nor the source of the funds used to satisfy the debt. ILVA/ILT is confusing the benefit to the recipient of the subsidy the Department must measure (*i.e.,* the net liabilities stripped from ILP) with the subsequent transactions between ILVA Residua and the GOI. They argue that the Department rejected the same argument in *Plate in Coils from Italy* (*see* 64 FR at 15522–23), stating that such an analysis would calculate the cost to government, rather than the benefit to the recipient, in violation of the law. Petitioners submit that the same analysis is applicable in the instant investigation.

They add that there is a fundamental difference between the revenue from the privatization of ILP and AST and the revenue from other asset sales by ILVA Residua. Despite ILVA/ILT's claims, the GOI's receipt of cash from the proceeds of its sale of ILP (and AST) did not come from (old) ILVA itself and therefore does not constitute an ''offset'' to the liabilities stripped from (old) ILVA. Petitioners note that section 771(6) of the Act provides a list of proper offsets in determining the net countervailable subsidy and the proceeds from a privatization are not included within the list.

Department's Position: As mandated by law under section 771(5)(E) of the Act, the Department must calculate subsidies as the benefit to the recipient and not the cost to the government as proposed by respondents. Accordingly, we must determine, at the time ILP was spun-off from (old) ILVA, the benefit that ILP received, calculated as the portion of (old) ILVA's liabilities which was forgiven on behalf of ILP. At the time of ILP's separate incorporation of January 1, 1994, ILP clearly benefitted to the extent that it did not assume a proportional share of (old) ILVA's liabilities. ILP emerged with a positive equity position as a result of ILVA Residua's assumption of the vast majority of (old) ILVA's liabilities, which included that portion of liabilities which should have been transferred to ILP.

While the EC's Monitoring Report is a useful source of information about the liquidation of (old) ILVA, the methodologies the EC employs to measure and report amounts associated with the liquidation may not be appropriate for our purposes, *i.e.,* for identifying and measuring the countervailable benefit to ILP from the GOI's liquidation activities. For example, we cannot rely on calculations based on the cost to the government rather than the benefit to the recipient. *See Sheet and Strip from Italy*, 64 FR at 30633.

It is the Department's practice to determine the benefit to a respondent as the amount of liabilities that are not directly associated with any given assets that the respondent should have taken. *See Plate in Coils from Italy*, 64 FR at 15522–23. If liabilities are not properly distributed to a new company through a restructuring process, a benefit is conferred upon the productive assets of the new entity. The assumption by a government of those liabilities not apportioned is the countervailable event. If the new company is later sold, as was the case with ILP, then the Department applies its change in ownership methodology to determine the portion of the purchase price attributable to the repayment of prior subsidies. We note that the cash transfer for ILP did not take place at the time of the company's separate incorporation, but over a year later when ILP was sold to the RIVA Group in April 1995. Therefore, consistent with the Department's policy, we determine that ILP received a benefit when it was separately incorporated from (old) ILVA; the benefit was that portion of liabilities of (old) ILVA which should have transferred to ILP, but instead remained with ILVA Residua. *See, e.g., Electrical Steel from Italy*, 59 FR at 18365, and *Certain Steel from Austria*, 58 FR at 37221.

Comment 11: ILVA 1993 Asset Write-Downs

Respondents contend that as a matter of law, accounting and simple fact, the Department's preliminary approach to this subject was in error. In the *Preliminary Determination,* according to respondents, the Department countervailed the asset write-downs taken by (old) ILVA in 1993, treating the write-downs as a countervailable event. This, according to respondents, reflected the Department's preliminary view that the write-downs generated losses and that these losses were the equivalent of debts that would have to be covered by the government. Respondents maintain that the asset write-downs taken by the ILVA Group in 1993 amounted to 1,780 billion lire, including write-downs of 1,685 billion lire for assets that would later be transferred to ILP.

Respondents claim that both Italian and U.S. GAAP require the write down of asset values, once the impaired condition of the assets is manifest, particularly in the face of an impending sale or transfer of assets. Respondents state that the correct application of these accounting rules in the current investigation requires an appreciation of the fundamental distinctions between asset write-downs, losses, and debts.

According to respondents, the occurrence of a loss by a company, as reflected on the balance sheet by a reduction in shareholder's equity and an accompanying asset write-down, involves neither a direct transfer of funds into the company nor the forgiveness of any debts. Rather, the asset write-downs are accounting entries required by Italian and U.S. GAAP in the event the losses reflect a material impairment of an asset's earnings potential over its remaining useful life. The asset write-down does not ''cause'' the loss; instead events or circumstances which cause losses, such as overcapacity or obsolescence, may require an extraordinary write down of asset values on the asset side of the balance sheet and an offsetting reduction to a capital account on the liabilities/shareholders' equity side of the balance sheet.

Respondents take issue with the Department's analysis in the *Preliminary Determination.* Although respondents agree that under section 771(5)(D) of the Act, the Department has an obligation to identify a ''financial contribution'' from the government to (old) ILVA, they believe the Department erred in preliminarily determining that asset write-downs are a ''direct transfer of funds'' in accordance with section 771(5)(D)(I). *See Preliminary Determination,* 64 FR at 40423.

Respondents claim that two fundamental flaws with the Department's *Preliminary Determination* are evident. First, the Department has confused ''real'' events and obligations with accounting entries that create no such obligations. Second, the Department has double or even treble counted benefits conferred by a single financial contribution. Regarding the confusion over ''real'' events versus accounting entries, respondents state that the assumption or forgiveness of a debt is equivalent to a grant only if the government voluntarily pays a debt on behalf of the company, or voluntarily waives its right to receive a payment from the company. They further state that above all, there has to be a debt and it has to be forgiven and that a loss is not a debt and is by no means equivalent to a debt. A loss is recorded on the income statement and typically impacts the balance sheet as a reduction to retained earnings, reserves or other capital account. If the loss-making company wants to avoid an erosion in its capital, it can replenish its funds either by obtaining additional equity or incurring additional debt. The loss, in and of itself, will have no direct impact on debt and may never have any impact on debt, given other means of absorbing losses available to the company. Respondents contend that an asset write-down neither increases debt nor forgives debt. The act of borrowing is a ''real'' event, not simply an accounting event, just as the act of debt forgiveness is a ''real'' event, whereas the recording of an asset write-down, or the reduction of shareholders' equity, are accounting entries that impose no new obligations on the company.

Regarding double counting the benefit from a single financial contribution, respondents state that the failure to distinguish between (1) past financial contributions, (2) potential future financial contributions, and (3) actual financial contributions that occur in subsequent years, has led the Department to double or even treble count the benefit from individual contributions of the same capital. To the extent that the government contributed either equity or debt to (old) ILVA, and thereby conferred a subsidy, those financial contributions remain countervailable over the AUL period. To the extent the government forgave accumulated debt, that act of debt forgiveness is also potentially countervailable. Respondents go on to argue that an intervening loss and asset write-down incurred by the company that received the original equity infusion, and that might later benefit from a debt forgiveness, would not represent an additional financial contribution from the government or confer a separate countervailable benefit. In the absence of a new financial contribution, as defined by section 771(5)(D) of the Act, there can be no subsidy.

In (old) ILVA's case, according to respondents, the 1991/92 equity infusions of 660 billion lire provided a financial contribution from the GOI that supported the acquisition of assets and other operations of (old) ILVA and thereby conferred a countervailable benefit. (Old) ILVA's subsequent losses (and associated write downs) involved no additional financial contribution or benefit because they involved no affirmative action of any sort on the government's part. Instead, they simply reflected the company's failure to earn a profit. As described above, such losses result in a reduction of retained earnings or other capital account on the balance sheet. No government action is associated with an accounting entry of this type, and no benefit is conferred. An additional financial contribution by the government can be said to occur only in the event of additional equity infusions, loans or debt forgiveness provided by the government. Thus, to impose countervailing duties in connection with the 1993 asset write-down would unlawfully double penalize ILVA for the same capital.

Petitioners contend that the debt forgiveness and coverage of losses provided by IRI to ILP (now (new) ILVA) in connection with the 1993–94 Restructuring Plan provided a financial contribution to (new) ILVA in the form of a direct transfer of funds—the equivalent of a grant—as described in section 771(5)(D)(I) of the Act. Petitioners cite *Sheet and Strip from Italy*, 64 Fed. Reg. at 30,628. They point out that ILVA/ILT has repeatedly argued that the coverage of losses by the GOI resulting from asset write-downs in the various restructurings of the Italian state-owned steel industry does not constitute a financial contribution and that this argument is in error.

Petitioners cite *Plate in Coils from Italy* in their argument that the Department has previously considered the countervailability of the coverage of losses resulting from the write-down of assets in connection with the 1993–94 restructuring. In that case the Department found that because the asset write-downs generated a loss that was eventually covered by the GOI through its debt forgiveness to ILVA, the asset write-downs are countervailable. Petitioners also cite *Electrical Steel from Italy* for their assertion that the Department has previously considered countervailability of asset write-downs in Italy. In that case assets transferred from a GOI created ''shell company'' (TAS) to (old) ILVA were written down prior to the transfer and as a result, the GOI created ''shell company'' was forced to absorb greater losses, which were countervailed.

According to petitioners, in order to understand the connection between the countervailable benefit from the reduction of liabilities afforded (old) ILVA and the asset write-downs, the Department need only consider the methodology it used to determine the amount of countervailable benefit that arises from the liabilities that were stripped from (old) ILVA in the 1993–94 restructuring. In particular, the countervailable benefit equals the total (gross) liabilities transferred out of (old) ILVA minus the total assets transferred, which equals the net liabilities transferred. For example, if the government transfers $100 in gross liabilities and $20 in assets, then the net benefit is $80. Obviously, the correct result from this calculation depends on the correct value of both the gross liabilities and the assets. If, in this example, it is determined after the transfer takes place that the assets are, in fact, worth only $10 and are written down accordingly, then the true amount of net liabilities transferred is $90—or $10 more as reflected in the amount of the asset write-down.

Respondents dispute petitioners use of *Electrical Steel from Italy* (see, 59 FR at 18359) pointing out that the passages from that final used by petitioners address the Finsider restructuring (not the (old) ILVA restructuring) and that this passage neither references nor identifies a financial contribution. In fact, respondents claim that the *Electrical Steel from Italy* determination illustrates that by focusing exclusively on the perceived benefit without identifying any financial contribution, the Department has unlawfully engaged in double counting of a single subsidy event. Further, respondents dispute petitioners' other cited case, *Plate in Coils from Italy* (*see*, 64 FR at 15525). Respondents argue that the issue of countervailing asset write-downs *in Plate in Coils from Italy* was decided on the basis of a deficient record in which the Department did not have the benefit of the complete legal, accounting, and factual information contained in the record of this current investigation, which is necessary for the Department to reach an informed determination.

Respondents argue that the Department has countervailed (old) ILVA's equity infusions that preceded the asset write-down as well as the debt forgiveness that followed the asset write-downs, and that it would be unlawful to countervail the intervening asset write-downs, which involved no new or separate financial contribution from the GOI.

Department's Position: Respondents misunderstand the Departments position concerning the asset write-downs that (old) ILVA took in 1993 as part of the restructuring/privatization plan. We disagree with respondents that the technical GAAP requirements on asset write-downs of either country are particularly relevant to the issue. The main point is that retained liabilities of (old) ILVA represent the portion of the company not covered by assets and, therefore, this is the pool of liabilities covered by the GOI. To clarify, the recognition of the fact that (old) ILVA's assets had become impaired in value (a real event), and needed to be written-down, increases the retained losses (i.e., negative equity), in the same manner as any other operating expense or loss. The large retained losses, while not technically debt, represents the portion of the company's liabilities that cannot be covered by the sale or transfer of assets. It is clear that the total amount of debt is not increased by the asset write-downs. However, the writing down of assets must be factored in to accurately reflect the amount of debt the GOI is forgiving.

It is important to note that in its history of examining asset write-downs in connection with Italian state-owned steel industry restructurings, the Department has not determined that asset write-downs per se are countervailable events. In each instance, the Department referred to the specific situation in the Italian steel industry, where debt forgiveness was involved. Certainly, there are many instances where private sector companies revalue their assets in accordance with GAAP for perfectly legitimate reasons. What the Department has consistently determined in *Electrical Steel from Italy, Plate in Coils from Italy*, and *Sheet and Strip from Italy*, is that coverage of liabilities by the GOI, whether those liabilities are created or increased by asset write-downs or any other economic event, is countervailable. In all of these cases, the Department was presented with the issue of how to apportion liabilities that were retained by the GOI that should have been transferred to the new companies, ILP and AST. To the extent that asset write-downs, recorded prior to the separate incorporation of the companies, increased the liabilities retained by the GOI, the Department has considered those write-downs in the calculation of the benefit from the debt forgiveness. The real issue here is how to apportion liabilities retained by the GOI across the companies created by the 1993–94 Restructuring Plan, namely AST and ILP. We can only identify the actual liabilities covered by the government if we factor in the value of the asset write-downs. Because the asset write-downs can be tied to specific assets that went to ILP and AST, it is appropriate to factor these into our calculation. Assigning the amounts of the tied write-downs to the appropriate companies (ILP and AST) is a more reliable way to apportion the liabilities that should have been transferred.

We disagree with respondents' argument that *Electrical Steel from Italy* is not relevant here because it involved Finsider's restructuring rather than (old) ILVA's restructuring. Respondents' distinction between these two cases is largely cosmetic. Respondents' allegation of double counting benefits is also without merit. In its calculation of the total benefit from the 1993–94 Restructuring Plan, the Department was careful to deduct the amount of liabilities associated with (old) ILVA's asset write-downs from the amount of liabilities covered by the GOI that were apportioned according to asset values. The amount of net liabilities created by the asset write-downs associated with assets transferred to ILP were then added directly to the first calculation described above to arrive at the total amount of countervailable debt forgiveness, thereby negating the possibility of double counting. This calculation is consistent with *Plate in Coils from Italy*. We disagree with respondents that *Plate in Coils from Italy* is not relevant here since that case was ''decided on the basis of a deficient record in which the Department did not have the benefit of the complete legal, accounting, and factual information contained in the record of this current investigation'' (*see* ILVA/ILT's November 23, 1999 Rebuttal Brief, at 19). The issue in this current case as well as the *Plate in Coils from Italy, Sheet and Strip from Italy*, and *Electrical Steel from Italy* cases is not the completeness of the record. It is the countervailability of liabilities/losses covered by the GOI and how to apportion those amounts among respondent companies.

Comment 12: Any Benefit From Debt Coverage Was Received at the Time of the Original Loans, Not Upon Liquidation of (Old) ILVA or Finsider

Respondents disagree with the Department's analysis that the debt coverage provided at the time of the liquidation of Finsider in 1988 and the ILVA Group in 1993, was a new and separately countervailable benefit. They argue that the actual benefit was many years before, when IRI guaranteed the loans that it later had to cover during the liquidations of Finsider and (old) ILVA. It was the loan guarantees that later obliged IRI to provide the debt coverage, and therefore, the only possible subsidy event occurred at the time when IRI provided the guarantees, *i.e.,* at the time of the original commercial borrowings.

Respondents also argue that the loan guarantee which (old) ILVA received at the time of its commercial borrowings was consistent with normal commercial practice in Italy, and thus, did not provide a countervailable benefit, citing to section 351.506(b) of the CVD Regulations. They state that Article 2362 of the Italian Civil Code makes the sole shareholder an automatic guarantor of all loans obtained by its wholly-owned subsidiary, and point to information placed on the record that demonstrates the widespread use of the sole shareholder structure in Italy. However, if the Department finds a countervailable benefit, then that benefit could only have occurred at the time of the original commercial borrowings which IRI guaranteed and not at the time of liquidation. Respondents argue that the Department would be impermissibly double-counting a single subsidy event by finding that IRI's coverage of the same loans during liquidation subsequently provided a new countervailable benefit.

Petitioners state that, with respect to the 1988 restructuring, there is record evidence that the guarantee of Finsider debt by IRI was an integral part of the overall 1988 Restructuring Plan. First, IRI issued an explicit guarantee to the Finsider Group's creditors that all the principal and interest of the Group's existing loans would be repaid. *See* EC Decision 89/218/ECSC of December 23, 1988, contained in the Petitioners' November 12, 1999 Case Brief, at Exhibit 1, page 77. The guarantee issued in connection with the 1988 restructuring was issued in 1988, and not when any outstanding loans were made to Finsider at some earlier date. Therefore, the proper countervailable event is the actual provision of the debt forgiveness and coverage of losses in connection with the 1988 restructuring.

With regard to the 1993–94 Restructuring Plan, there were no IRI ''guarantees'' of loans to (old) ILVA prior to the enactment of the plan. According to ILVA/ILT's September 3, 1999 QR, the provisions of Italian Civil Law (*i.e.,* Article 2362) did not apply to IRI, the ''sole shareholder'' of (old) ILVA, until July 1992, when IRI was converted into a public limited company. Thus, the ''sole shareholder'' guarantee argued by respondents could not have been applicable to any loans taken by (old) ILVA, or predecessor companies, prior to July 1992. They add that record evidence indicates that (old) ILVA's loans pre-date July 1992. Therefore, petitioners argue that the ''guarantee'' provided by IRI under Article 2362 is irrelevant to this case and the countervailable event is the forgiveness of debt and coverage of losses that occurred when (old) ILVA was demerged into AST and ILP. In addition, petitioners argue that the ''sole shareholder'' provision is not a normal loan guarantee.

Department's Position: ILVA/ILT's arguments that the Department is countervailing the wrong subsidy event (*i.e.,* debt forgiveness provided under the 1988 and 1993–94 Restructuring Plans) and double-counting subsidies in terms of both loan guarantees and debt coverage are incorrect. We find that, even if there had been some earlier loan guarantee by the GOI, a loan guarantee and the forgiveness of debt are two separate and distinct subsidy events. In a commercial context, where a borrower defaults on a loan that is guaranteed, the borrower is still liable to the guarantor for the debt that is now being paid by the guarantor. Thus, if a borrower defaulted on a government-provided loan guarantee, the borrower would still be liable to the government for the debt, and the subsequent forgiveness of the debt would be a separate, countervailable event from the government-provided loan guarantee. *See* section 351.508 of the CVD Regulations.

Comment 13: Italy's Generally Available Liquidation Process Provided No Countervailable Benefits

Respondents state that even if the Department regards liquidation as a separate subsidy event from the original loan guarantees provided by IRI, the Department must address the question of specificity under section 771(5A) of the Act. They discuss that in the *Preliminary Determination,* the Department found a specific benefit from the liquidation of (old) ILVA, under the theory that liquidation occurred under an EC directive which was specific to (old) ILVA (see 64 FR at 40423–24). Respondents argue, however, that the liquidation occurred under a generally applicable provision of the Italian Civil Code, not under an EC directive.

In support of their argument, respondents state that (old) ILVA entered into voluntary liquidation on October 31, 1993, in accordance with Articles 2448 *et. seq.* of the Italian Civil Code, which is similar to U.S. bankruptcy procedure. The liquidation took place prior to the EC's April 1994 Commission Decision which provided the EC with oversight authority to prevent ''unfair competition'' and to protect ''conditions of trade in the Community steel industry.'' *See* EC Decision 94/259 of April 1994, contained within ILVA/ILT's May 13, 1999 questionnaire response, at Exhibit 16.

Respondents argue that the same liquidation procedures automatically apply to all Italian corporations, regardless of whether they are privately-held or state-owned, and regardless of the industrial sector in which they operate (*i.e.,* broad cross-section of firms utilize the process without any disproportionate or predominant users or favoritism in the law's application). The Court of Rome's acceptance of (old) ILVA's entry into liquidation was not the type of discretionary government action that justifies a finding of specificity by the Department.

They further discuss that judicial precedent has firmly established that receivership under a generally-available bankruptcy law does not confer a countervailable subsidy, citing *Al Tech Specialty Steel Corp.* v. *U.S.,* 661 F. Supp. 1206 (CIT 1987) (*Al Tech*). The court in *Al Tech* upheld the Department's finding, in *Certain Stainless Steel Products from Spain,* that the receivership of Olarra had extinguished prior subsidies received in the form of loans to that company. In that case, the Department ruled that ''where the [local] court has specifically recognized the company's receivership, we find that any countervailable benefits associated with loans incorporated in the receivership plan cease to exist.'' *See Certain Stainless Steel Products from Spain,* 47 FR 51453, 51455 (November 15, 1982).

Petitioners state that the Department rejected the same ''generally-available liquidation'' argument with respect to a similar restructuring plan for Cogne S.p.A. in *Wire Rod from Italy* (*see* 63 FR 40498). They submit that the record of the instant investigation provides clear evidence that the privatization of ILP and AST was the purpose of (old) ILVA's liquidation and that, as in *Wire Rod from Italy,* the liquidation was merely the mechanism through which one aspect of a massive government restructuring and state aid plan was to be implemented.

Based on this record evidence, petitioners conclude that ILVA/ILT's argument that (old) ILVA's liquidation was a normal proceeding under Italian law is specious at best. The Plan was limited by its terms to one entity, (old) ILVA, and the benefits were limited to (old) ILVA and its two privatized companies: ILP and AST. The Department in both *Plate in Coils from Italy* (*see* 64 FR 15508) and *Sheet and Strip from Italy* (*see* 64 FR 30624) treated the 1993–94 Restructuring of (old) ILVA as providing specific countervailable subsidies to AST. To petitioners' knowledge, the only other entities in Italy to receive similar restructuring benefits were other pieces of the Italian state-owned steel industry, such as Cogne, itself formerly a part of (old) ILVA; and these benefits were found to be specific (*see, Stainless Steel Wire Rod,* 63 FR 40475). Therefore, under section 771(5A)(D), the Department should continue to find the 1993–94 Restructuring Plan *de facto* specific.

Petitioners also argue that ILVA/ILT's reliance on *Al Tech* to support its position is misplaced. *Al Tech* involved a normal recourse to traditional bankruptcy protection, in which the company in question received traditional benefits under a receivership plan without special consideration. *See Al Tech,* at 1212. The court made clear that the mere use of a bankruptcy law would not insulate a subsidy recipient from the countervailing duty law where special benefits were bestowed on specific enterprises. *See Id.*

Department's Position: Consistent with our determination in *Wire Rod from Italy* (*see* 63 FR 40498), we disagree with respondents' argument pertaining to the sole shareholder provision of Italian law. The record evidence demonstrates that the liquidation of (old) ILVA, including the debt forgiveness provided, was done in the context of a massive restructuring/privatization plan undertaken by the GOI, which was approved and monitored by the EC. The debt forgiveness which ILP realized was provided in the context of a massive state-aid package designed to allow the GOI to restructure and privatize its steel holdings. At verification, GOI officials ''emphasized that the goal of the 1993–94 Restructuring Plan was not simply the liquidation of ILVA S.p.A and demerger of AST and ILP, but the privatization of the Italian steel industry.'' *See GOI Verification Report,* at 10–11.

While the EC did not direct the GOI to place (old) ILVA in liquidation on October 31, 1993, the 1993–94 restructuring and privatization plan, of which liquidation was an integral part, was subject to the approval of, and monitoring by,[10] the EC. In fact, ILVA/ILT, in their May 13, 1999 response, states that ''[T]he restructuring that occurred during the liquidation process was reviewed by the EC under its competition rules and resulted in the EC decision [of April 12, 1994].'' This statement indicates that the restructuring and liquidation were not separate events, but two processes which the GOI set in motion with the ultimate objective of privatizing (old) ILVA through the demerger and separate incorporation of two spin-off companies: ILP and AST.

The evidence on the record demonstrates that the liquidation was not a normal occurrence, but was part of an extensive state-aid package designed to bestow special benefits on a specific enterprise. In support of our

[10] As stated in the EC's April 12, 1994 approval, the GOI was responsible for furnishing reports on the implementation of the ''privatization and reorganization programme and in particular * * * financial data necessary to allow the Commission to assess whether its conditions and requirement are fulfilled.'' *See* EC's 94/259/ECSC Decision of April 12, 1994, at 69.

finding that the 1993–1994 Restructuring Plan is *de facto* specific, we note the EC's 94/259/ECSC decision of April 12, 1994, in which the Commission identified the restructuring of (old) ILVA as a single program, the basic objective of which was the privatization of the ILVA steel group by the end of 1994. *See* EC's 94/259/ECSC decision of April 12, 1994, at 65. As set forth in the EC's approval decision, the 1993–1994 Restructuring Plan was limited by its terms to (old) ILVA and the benefits of the plan were received by only (old) ILVA's successor companies.

Comment 14: The Extinguishing Versus Pass-Through of Subsidies During Privatization

The GOI and ILVA/ILT argue that, based on the verified circumstances of the sale of ILP, the Department must conclude that privatization extinguished any prior subsidies to (old) ILVA. The respondents first posit that ILP's privatization, monitored by the EC, was an open and competitive process, and therefore, was conducted at ''arm's-length.'' The privatization of ILP was accomplished through a public tender with negotiation of terms between IRI and competing bidders to establish an acceptable price. They equate the sale of ILP to that of British Steel. They note that a WTO dispute resolution panel recently determined that open and competitive bidding procedures which result in payment of a market price for a privatized company will extinguish prior subsidies to that company.

They add that U.S. law recognizes that privatization can extinguish subsidies. *See* Section 771(5)(F) of the Act and *Delverde S.r.l.* v. *United States,* 989 F. Supp. 218, 228 (CIT 1997). They argue that based on the record of this investigation, U.S. law would support a determination that no subsidies passed through to the new owners of ILP upon its privatization in 1995. The sale of ILP occurred at a market price and therefore involved payment for the market value of the company, including the current value of any subsidies received by the company prior to privatization.

Petitioners argue that the URAA confirms that subsidies remain fully countervailable following a change in ownership, referencing section 771(5)(F) of the Act. They add that record evidence indicates that none of the subsidies bestowed on ILP's predecessor companies should be treated as ''repaid'' as a result of the 1995 privatization of ILP. The purchase price of ILP was below fair market value, and therefore, no prior subsidies were extinguished in the sales transaction. In support of their position, they note that the GOI placed restrictions on the buyer of ILP such that the company could not be shut down and no employees could be terminated for a period of three years after the sales transaction. *See GOI Verification Report,* at 14–15. Such restrictions undoubtedly caused many potential bidders not to participate in the privatization process and surely reduced the value of ILP to those bidders still willing to participate. Thus, the purchase price agreed to by RIVA was undoubtedly lower than a ''negotiation process directed at obtaining the highest possible return.'' They add that the ''below-market'' price agreed upon by RIVA and the GOI has yet to be fully paid, as the sale is in arbitration. Therefore, it is not rational to conclude that any subsidies were repaid, much less extinguished in the purchase transaction.

Department's Position: Under our existing methodology, we neither presume automatic extinguishment nor automatic pass through of prior subsidies in an arm's-length transaction. Instead, our methodology recognizes that a change in ownership has some impact on the allocation of previously bestowed subsidies and, through an analysis based on the facts of each transaction, determines the extent to which the subsidies are allocated to the privatized company. In the instant proceeding, the Department relied upon the pertinent facts of the case in determining the extent to which the countervailable benefits received by ILP's predecessor companies passed through to ILP.

Following the GIA methodology, the Department subjected the level of previously bestowed subsidies and ILP's purchase price to a specific, detailed analysis. This analysis resulted in a particular ''pass through ratio'' and a determination as to the extent of repayment of prior subsidies. On this basis, the Department determined that, when ILP was privatized, a portion of the benefits received by (old) ILVA, and other predecessor companies, passed through to the privatized company and a portion was repaid to the government. This is consistent with our past practice and has been upheld in the Court of Appeals for the Federal Circuit in *Saarstahl AG* v. *United States,* 78 F.3d 1539 (Fed. Cir. 1996) (*Saarstahl II*), *British Steel plc* v. *United States,* 127 F.3d 1471 (Fed. Cir. Oct. 24, 1997) (*British Steel II*) and *Delverde II.*

Furthermore, ILVA/ILT's contention that the sale of ILP was an arm's-length, market-valued transaction 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. Section 771(5)(F) of the Act instead leaves the choice of methodology to the Department's discretion. Additionally, 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. *See* SAA at 928.

Lastly, with respect to the respondents' comments concerning the recent finding by a WTO Dispute Settlement Panel that an arm's-length privatization automatically extinguishes prior subsidies received by government-owned firms, the Department notes that this was an interim (*i.e.,* preliminary) confidential report. As such, it is inappropriate for the parties or the Department to comment on it.

Comment 16: Repayment Portion of Change-in-Ownership Analysis

According to petitioners, Congress intended that countervailing duties be imposed to offset subsidies to production. Since changes in ownership do not affect production, the petitioners conclude that they should also not affect countervailing duty liability.

The petitioners distinguish between the subsidies themselves and countervailing duty liabilities arising from those subsidies. Citing the GIA (58 FR at 37260) where it quotes *British Steel Corp.* v. *United States,* 605 F. Supp. 286, 294 (CIT 1985), the petitioners state that the Department is obligated, when injury exists, to impose duties when subsidies have been provided ''with respect to the manufacture, production or export * * * of a class or kind of merchandise'' imported into the United States. To show that the liability for such subsidies is attached to production, the petitioners cite to the same where it states, ''if a benefit or advantage is received in connection with the production of merchandise,'' that benefit or advantage is a ''bounty or grant on production.'' To further demonstrate the linking of countervailing duty liabilities to production in a post-URAA case, the petitioners cite the Final Results of Redetermination Pursuant to Court Remand, *Delverde, SrL* v. *United States,* Consol. Ct. No. 96–08–01997, *aff'd, Delverde, SrL* v. *United States,* 24 F. Supp.2d 314 (CIT 1998) where it states:

> Once the Department determines that a ''subsidy'' has been provided, it measures the amount of the subsidy, attributes the subsidy to the appropriate production * * *

Generally speaking, the practical results of this system is to link liability for, as an example, pasta subsidies to pasta production.''

The petitioners maintain that after a change in ownership, a company will produce at the same cost, in the same volume and with the same artificial advantages born of subsidies. Petitioners claim that this happens because the profit-maximizing level of price and output are unchanged. According to petitioners, regardless of whether a buyer or seller captures the benefit of a subsidy after a change in ownership, the buyer still acquires the subsidy-augmented production facilities and uses them at the same profit-maximizing level, thus leaving the misallocation of resources arising from the subsidies and the threat to the companies' competitors unchanged.

To show that the seller actually captures the benefit of previously bestowed subsidies, the petitioners cite a publication by the U.S. Department of Agriculture which states that subsidies to farmers have created inequities between existing and entering farmers by increasing the cost of acquiring land for entering farmers.[11] The petitioners maintain that even though sellers gain the windfalls from subsidies during a change in ownership, the reallocation of countervailing duty liabilities back to the sellers is inappropriate. First of all, the price paid by a buyer is discounted for the risk associated with the countervailing duty liabilities, according to petitioners. In addition, since the seller no longer has control over production, the petitioners state that imposing duties on the seller would not have the effect of offsetting the artificial advantages on production arising from the subsidies.

The petitioners further argue that the reallocation/repayment aspects of the Department's change-in-ownership methodology amount to measuring the effects of subsidies and taking account of events subsequent to the bestowal of the same. According to 19 CFR 351.504–511, the Department should not take into account the effects of subsidies and, instead, should measure benefits at the time of bestowal.

Finally, the petitioners take issue with the Department's practice of automatically conducting a repayment/reallocation analysis as part of its change-in-ownership methodology. According to the petitioners, the URAA legislative history makes it clear that such automatically was not intended by Congress where it says that the Department must continue to countervail subsidies following a normal (*i.e.,* fairly priced) ownership change without lessening or reallocating unamortized subsidy benefits unless something else occurs during the transaction that ''actually serve[s] to eliminate * * * subsidies.'' See S. Rep. No. 103–412 at 92 (1994).

Department's Position: The petitioners' main argument is that subsidy liabilities are attached to production; therefore, subsidy amounts cannot change when production remains unchanged. While we agree that subsidies benefit production, that does not require the conclusion that subsidies cannot change without changes in production. Our rationale for applying repayment calculations as part of our change-in-ownership methodology does not pre-suppose that production has changed. Rather, our methodology is based on the idea that a portion of the purchase price for ownership rights may remunerate the seller for prior subsidies.

To the extent we countervail the portion of the subsidy existing after repayment or reallocation, we are executing our mandate ''to impose duties with respect to the manufacture, production or export of a class or kind of merchandise.'' Not reducing the subsidy by the amount of repayment or reallocation for a seller would amount to over-imposing duties. Our repayment/reallocation methodology, as part of our change-in-ownership methodology, has been litigated and upheld by the Courts (*see Saarstahl AG* v. *United States,* 78 F.3d 1539 (Fed. Cir. 1996), *British Steel plc* v. *United States,* 127 F.3d 1471 (Fed. Cir. Oct. 24, 1997) *British Steel plc* v. *United States,* 929 F. Supp. 426, 439 (CIT 1996) and *Delverde, SrL.* v. *United States,* 24 F. Supp. 2d 314 (CIT 1998).

Regarding the petitioners' argument that the risk of countervailing duty liabilities will be taken into account by a buyer, we agree that this might occur and result in a discounted price for the company being sold. However, at the time the changes in ownership relevant to the investigation occurred, the Department's change-in-ownership methodology was being challenged in court. Therefore, while there might have been some risk, there was no certainty of a countervailing duty liability. Any attempt to account for the risk would be purely speculative.

We disagree with the petitioners' assertion that the ''automatic'' nature of the repayment/reallocation analysis is contrary to the URAA legislative history. The legislative history simply says that a change in ownership ''does not by itself require the Commerce Department to determine that a countervailable subsidy * * * continues to be countervailable, even if the change in ownership occurs through an 'arm's length transaction ' ''and that ''the sale of a firm at 'arm's length' does not automatically extinguish any previously-conferred (sic) subsidies.'' See S. Rep No. 103–412 at 92 (1994). To the extent our repayment/reallocation methodology does not make any presumptions as to whether there will be any repayment/reallocation as a result of a change in ownership, there is nothing inherently automatic in its nature. Nowhere does the legislative history require that ''something else'' must happen, as was argued by the petitioners, before subsidies can be extinguished.

Finally, regarding the petitioners' argument that the repayment/reallocation calculation amounts to measuring to the effects of subsidies, we disagree. Our calculation does not look at the effects of a subsidy, but instead looks at the effects of changes in ownership on the subsidy.

Comment 16: Discount Rate for Net Present Value Calculations

Respondents argue that in the *Preliminary Determination,* the Department used an uncreditworthy discount rate to calculate the benefit stream from non-recurring subsidies over the entire AUL period, while using a creditworthy discount rate to discount these same benefits in 1998, back to 1995, the year of ILP's privatization. It is respondents' view that under 19 CFR 351.524(d)(3) and 351.505(a)(4), the Department must, in selecting a discount rate for any allocation of benefits, determine creditworthiness ''in the year in which the government agreed to provide the subsidy.'' Respondents argue that since the Department has to use the subsidy approval year, and since the Department regards (old) ILVA's predecessors as uncreditworthy during that period, the Department must assign an uncreditworthy interest rate to (old) ILVA for all of its net present value (NPV) calculations.

Petitioners state that if the Department chooses to apply its repayment methodology in this case, they do not disagree with the concept that the Department should use consistent discount rates for all NPV calculations for its final determination and that discount rates are properly determined at the time of subsidy bestowal.

[11] U.S. Farm Programs and Agricultural Resources, USDA Economic Research Service, Agricultural Information Bulletin No. 614 (Sept. 1990).

Department's Position: We disagree with both respondents and petitioners concerning our use of discount rates. Consistent with our past practice, we have used the discount rate prevailing at the time of privatization. This issue was discussed in the GIA: ''Finally, we reduced the benefit streams of the prior subsidies by the ratio of the repayment amount to *the net present value of all remaining benefits at the time of privatization.*'' (emphasis added) *See* GIA, 58 FR at 37263. This is the same approach taken by the Department in *Plate in Coils from Italy,* and *Sheet and Strip from Italy.* Given the Department's past practice and the language of the GIA, it is inappropriate to use the original discount rates from the subsidy allocation formula to calculate the net present value of remaining benefits at the time of privatization.

Comment 17: Early Retirement Benefits

Petitioners contend the appropriate benefit to ILVA/ILT from Law 451/94 is the full amount of the payments made by the GOI to workers attributable to ILVA/ILT under Law 451/94. They state it is now clear that, absent a government early retirement program, ILVA/ILT would not have been in a position to lay-off a substantial number of workers. Therefore, the workers were in a position to insist on the benefits received and, absent Law 451/94, the obligation would have fallen fully on ILVA/ILT.

Petitioners also contend that, since the GOI still owned (old) ILVA when the negotiations took place, before the adoption of Law 451, it was the GOI that negotiated the lay-offs and the early retirement program with the unions. ILP, which was bought the next year by Riva, was the beneficiary of the GOI's efforts to pay off the unions so as to avoid social strife while still creating a viable ILP that could be sold to a private investor.

Also, petitioners argue that since the proposed industrial plan was a critical factor for determining which bidder could purchase ILP, it is reasonable to assume that the GOI would have had extreme difficulty selling ILP to anyone, had it not established Law 451/94 and ensured a negotiated settlement with the unions on the necessary early retirement program for (old) ILVA. Indeed, the Riva Group was forced to agree as a condition of its purchase of ILP that no lay-offs of employees (beyond those previously agreed to by the unions in March 1994) could happen for a period of three years.

Respondents counter that the sales contract mandated the continued operation of production lines (''with the purpose of ensuring continuity of production'') as well as the continued employment of workers. They state that, contrary to petitioners' assertion that the contract demonstrates ILP would have kept all early retirees on its payroll in the absence of Law 451/94, the contract actually confirms that it was the production cut-backs and restructuring requirements that resulted in the adoption of Law 451 in 1994. As noted in the contract, without production cutbacks, no layoffs would have been needed. The choice between mass firings and Law 451/94 was not and has never been the choice that ILVA actually faced.

Regarding whether the program is countervailable, respondents argue Law 451/94 provided no countervailable benefit to ILVA because the government required the steel industry to restructure, based on the requirements set forth by the EC. In recognition of the costs imposed, the EC authorized member governments to provide early retirement and other ''social rehabilitation'' benefits. The restructuring and production cut-backs ordered by the EC and the GOI provided the legal basis for the early retirement benefits. Respondents argue that the Department does not consider worker assistance to benefit a company if the government provides the assistance for the specific purpose of offsetting costs imposed on that company by an industry-specific government program, as outlined in the General Issues Appendix.

Respondents further state that ILVA would not ''normally'' have incurred an early retirement burden, because it would not ''normally'' have needed to shutter capacity and shed workers under an EC and GOI restructuring plan. Absent the costs of restructuring, there would have been no Law 451/94 and no early retirement benefits. Under 19 CFR 351.513 and the GIA, Law 451/94 is not countervailable because it did not relieve ILVA of an obligation that it would normally have incurred.

Respondents also state that absent Law 451/94, ILVA's workers would have used the Mobility provision. ILVA had the legal right to lay off redundant workers without paying them annual compensation. In the absence of Law 451/94, ILVA would not have kept these workers on the payroll. Instead, ILVA would have negotiated with the unions under Law 223 and the non-specific provisions for early retirement under that law.

Petitioners contend that ILVA was not mandated to lay-off workers and therefore any early retirement benefits received under Law 451/94 provided a countervailable benefit. While ILVA/ILT claims Law 451/94 was adopted to offset the burden of EC requirements imposed on the Italian steel industry, petitioners argue that it was the EC's intention to provide an additional subsidy to the European steel industry, not some additional legal obligation on the industry. While it is true that the EC did mandate some reductions in production capacity for ILVA, petitioners state this was not done in the form of a legal directive, but rather, as a condition for receiving EC approval of the 1993–94 Restructuring Plan for ILVA and the massive subsidy program inherent in the Plan that had been proposed by the GOI. Moreover, even if one considered this a legal requirement, there is still no indication on the record in this investigation that ILVA was legally required to lay-off employees. Rather, the obligation, if any, was on ILVA to reduce production capacity. Petitioners contend Law 451/94 was not a device that ILVA could use to lay off workers, but only to grant early retirement to those that volunteered. Given these facts, petitioners argue the costs ILVA would have borne under Mobility are irrelevant to the Department's analysis of this program.

Department's Position: According to section 351.513(a) of the CVD Regulations, worker related subsidies provide a benefit to the extent that the assistance relieves a firm of an obligation that it would normally incur. We disagree with respondents' argument that the Department does not consider worker assistance to benefit a company if the government provides the assistance for offsetting costs imposed on that company by a government program. The industry restructuring, in and of itself, was not mandated by the GOI. Rather, the resulting capacity reductions, and corresponding layoffs associated with those reductions, were a condition for the receipt of additional subsidies. Thus, the capacity reductions in the Italian steel industry were a condition for receiving EC approval of the 1993–94 Restructuring Plan for ILVA, and its inherent subsidies. These capacity reductions would necessitate the layoffs. Further, since negotiations with the unions took place while the GOI still owned (old) ILVA, the GOI, in effect, negotiated the early retirements with the unions. Therefore, early retirement under Law 451 can be considered as another benefit to ILP, as an attempt to make it more attractive to a potential buyer in advance of its privatization.

As to whether the company could have used the ''Mobility'' provision of Law 223 in the absence of Law 451, we disagree with respondents' claims that laying off a significant number of employees would not have caused social unrest because those employees would have been compensated under Mobility. We have no way of knowing what the social implications would have been had there been a massive layoff in the steel industry. However, we note that benefits available under Mobility are far less generous than the benefits provided under Law 451. We also note that the GOI officials explained to us at verification that there would likely be social strife associated with such a large number of layoffs. Because of these factors, it is not unreasonable to assume that negative social implications would have occurred had the steel industry simply laid off a large number of employees.

Respondents point out that, as stated by the Department in *Plate in Coils from Italy* and *Sheet* and *Strip from Italy,* the benefit to ILP would have been the difference between what it would have paid under Mobility and what the company actually paid under Law 451/94. However, as explained by the Department, this is relevant only if we knew that the outcome of the negotiations between the Ministry of Labor, the company and the unions would have resulted in the union's failure to prevent any layoffs. The fact is that, under Law 223, the company would have had to enter into negotiations with the unions before laying off such a large number of workers, and we have no way of knowing what the outcome of those negotiations would have been, absent Law 451.

With regard to ILVA Residua early retirees, we find asset value apportioned to ILP, as a percentage of total viable assets of (old) ILVA immediately prior to ILP's separate incorporation, to be the most appropriate method to apportion the correct number of ILVA Residua early retirees to ILP. This is consistent with our findings for the 1993–94 Restructuring Plan. We disagree with respondents' argument that we should only apportion those ILVA Residua early retirees who worked at facilities connected to the operations of ILP. To the extent Law 451 provides a benefit to the entire entity of (old) ILVA by relieving it of costs it would otherwise have had to bear, the benefits flow to the entire entity, regardless of which facilities employed the workers.

In addition, we disagree with respondents' characterization that the Department verified all of the other ILVA Residua retirees came from facilities that ''were never connected to any of the activities of ILP.'' The Department's ILVA/ILT Verification Report states:

> We were able to verify that the following facilities were not involved in the production or sale of carbon steel plate products: Aosta; Bagnoli; Campi; Levate; Miniere dell'Elba; Piombino; Sesto S.G. + ex Uve/MI; Terni; Torino; and Torre Annunziata. For the remaining facilities, we verified that carbon steel plate production or sales either did, or could have, taken place there. The total number of those employees is 893, as calculated on page 10 of Verification Exhibit L451–5.[12]

Lastly, 26 early retirees attributable to ILVA Pali Dalmine, a former ILVA subsidiary that was sold prior to the POI, were not included in our calculation of the benefit to ILVA/ILT resulting from Law 451, since they would not have been employed by the company during the POI, absent Law 451.

Comment 18: Exemptions From Taxes

Petitioners contend that, in the *Preliminary Determination,* the Department failed to countervail the ILOR tax exemption that ILT benefitted from during the POI. At verification, the Department confirmed ILT benefitted from an exemption of both IRPEG and ILOR on its 1997 tax return, filed during the POI.

ILVA/ILT states that, at verification, the Department confirmed the repeal of the ILOR tax in 1997. ILOR no longer applied during the period of investigation. ILT received no exemption from ILOR in the 1998 tax year because the tax itself no longer existed. Under 19 CFR 351.526(b), repeal of ILOR constitutes a program-wide change because it ''(1) is not limited to an individual firm or firms; and (2) is effectuated by an official act, such as the enactment of a statute, regulation, or decree.'' As provided in 19 CFR 351.526(a), the Department should take this program-wide change into account in establishing the estimated countervailing duty cash deposit rate.

Petitioners counter by stating that the benefits available under ILOR are completely unaffected by its repeal. Petitioners contend that the repeal of ILOR does not constitute a program-wide change since it was accompanied with the implementation of a new tax, IRAP, which is a substitute for ILOR. ILVA/ILT's argument also ignores subsection (d) of 19 CFR 351.526, which provides that:

> The Secretary will not adjust the cash deposit under paragraph (a) of this section if the program-wide change constitutes the termination of a program and * * *. The Secretary determines that a substitute program for the terminated program has been introduced and the Secretary is not able to measure the amount of countervailable subsidies provided under the substitute program.

ILVA/ILT also states the Department should use the verified benefit calculations for the ILT tax exemptions from IRPEG. At verification, the Department confirmed that IRPEG tax without the exemption would have applied only partially at the 37% rate, because a small portion of income would have qualified for a 19% rate. By reviewing ILT's tax return, the Department verified that the value of the IRPEG exemption for the 1997 tax year was smaller than that which was used in determining the benefit in the *Preliminary Determination.*

Department's Position: We agree with petitioners that ILT's exemption of the ILOR tax provides a countervailable benefit during the POI. While respondents are correct that the ILOR tax was repealed beginning in the tax year 1998, ILT received an exemption of the ILOR tax on its 1997 tax return, which was filed in 1998, the POI. According to the Department's long-standing practice, a benefit takes place at the time of receipt, which, in this case is 1998, the year in which the tax return was filed. *See* section 351.509(b)(1) of the CVD Regulations. It is also clear to the Department that IRAP, for which eligibility for an exemption is similar to that of ILOR, is essentially a successor tax to ILOR; therefore, in accordance with section 351.526(d)(2), the cash deposit rate should not be adjusted in this instance.

After examining evidence at verification, we agree with ILVA/ILT that a portion of the profit to which the IRPEG tax applies should be calculated at the rate of 19%, with the remainder calculated at the rate of 37%.

Comment 19: European Social Fund (ESF)

Petitioners argue that, at verification, it was determined that at least some ILP employees participated in ESF training programs that took place in Taranto in 1994 and 1995. Since ILVA/ILT officials could not confirm how many of the total participants were ILP employees, the Department must countervail the full amount of the ESF payments as benefitting ILP since companies normally incur the costs of training to enhance the job-related skills of their own employees. The Department has previously countervailed ESF training funding to Italian steel producers.

[12] *See ILVA/ILT Verification Report,* at page 21.

ILVA/ILT states that the Department verified that these payments were not grants but were instead payments earned by ILP ''for services provided'' in connection with training and tutoring of workers in the Taranto area under an ESF grant administered by IRI. The Department noted that 11 of 64 workers that received training were from ILP, according to the explanation and partial documentation presented at verification. None of the training programs covered skills specific to the steel industry, and most of the workers attending had no connection to ILP. This general training course attended by workers of many firms did not relieve ILP of the obligation to provide steel-specific training to its workers and therefore is not countervailable under section 351.513 of the CVD Regulations.

Department's Position: Certain Stainless Steel Hollow Products From Sweden, 52 FR at 5799, states that ''because we saw no evidence that: (1) the classes were for jobs related to stainless steel production; or (2) that either of these companies was relieved of any expenses it otherwise would have incurred absent this program, we determine that no countervailable benefit was bestowed under this program.'' Based on our findings at verification, and the overall record of this investigation, there is nothing to suggest that the training programs in which ILP and ILVA/ILT received payment for services provided (DUSID, DUTEM, and DUMES) were related to the steel industry in general, let alone production of subject merchandise, or that the company was relieved of expenses it otherwise would have incurred.

Comment 20: Grants to ILVA

Petitioners argue that, while ILVA/ILT had claimed that the amounts listed in its annual reports for 1989–1992 as ''Grants and Aid for Operations'' were totals of grants provided under various programs being separately investigated, at verification, ILVA/ILT officials could not reconcile the figures from 1989–92 annual reports with the amounts the company received under the various separate programs. Petitioners claim that these discrepancies, together with the fact that the Department found such grants to be countervailable subsidies in *Certain Steel from Italy,* the Department should countervail these grants in the final determination.

Respondents counter that, legally, *Certain Steel from Italy* has no probative value and that the current investigation of ILVA is not an administrative review of *Certain Steel from Italy,* therefore the Department has no legal authority to use information from *Certain Steel from Italy* for any purpose whatsoever in the current, unrelated investigation. ILVA/ILT states that the Department investigated and verified the benefits that (old) ILVA received under all of the programs that might potentially have applied to ILVA between 1989–1992. In its June 21, 1999 questionnaire response, and again at verification, ILVA provided worksheets and supporting documentation that accounted for the sum total of ''Grants and Aid for Operations'' recorded on (old) ILVA's financial statements. The company noted that the majority of the benefits to (old) ILVA during those years came from interest contributions under Law 675/77. However, because the ILVA that now exists is not the same company or under the same ownership as the (old) ILVA, it has no access to records of the actual receipt or amount of interest contribution payments to (old) ILVA between 1989–1992. Respondents further state that ILVA did demonstrate in its June 21 response and at verification that: (1) the interest contribution obligations of the GOI would have resulted in actual interest contribution payments over this period; and (2) these payments could have fully offset the difference between the sum total of ''Grants and Aid for Operations'' recorded on old ILVA's financial statements and the amounts verified by the Department under the specific programs applicable at that time. Respondents argue that ILVA has, therefore, satisfied the burden of accounting for the benefits in question.

Department's Position: We agree with respondents that the company has satisfied the burden of accounting for any discrepancy between the amounts recorded in the financial statement and the amounts verified. We concluded from our verification that benefits received as interest contributions under Law 675 are listed in the ''Grants and Aid for Operations'' account in the company's financial statements. Although we could not completely tie these contributions directly to the financial statement, this is due to the difference in the recording of interest contributions for financial statement purposes and the recording of the actual receipt of the contributions in the company's internal accounts.

Comment 21: Additional Subsidies Discovered at Verification

Petitioners state that, at verification, the Department discovered that Sidercomit, which merged with ILVA in 1997, received a loan under Law 64 of March 1, 1986, in 1996, and in 1998, received interest contributions against that loan. Petitioners argue that these interest contributions on behalf of ILVA/ILT constitute a countervailable subsidy. Petitioners further claim that, as outlined in the ILVA/ILT Verification Report, these interest grants were provided to Sidercomit ''for the processing of quarto plate (*i.e.,* cleaning, painting, and packaging of quarto plate) at the Taranto facility,'' therefore, pursuant to 19 CFR 351.525(b)(5) of the Department's regulations, should be attributed only to ILVA/ILT's cut-to-length plate sales. Therefore, the Department should use ILVA/ILT's 1998 sales of subject merchandise as the denominator in its calculation of the *ad valorem* rate attributable to this benefit.

ILVA/ILT does not contest the countervailability of the interest contribution, but does challenge petitioners' proposed allocation method. Sidercomit was created in 1992 as a subsidiary of IDI S.p.A., which was in turn a subsidiary of (old) ILVA. Thus, at the time Sidercomit received the loans, it was a separate subsidiary of ILVA. However, in 1997, Sidercomit became an operating unit within ILVA and remained a unit within ILVA during the POI. As a result, respondents argue the interest contribution received during the POI benefitted all of ILVA, not just Sidercomit. This is confirmed by the fact that ILVA, not Sidercomit, is the recipient of the interest contribution. ILVA/ILT further states that the record establishes that Sidercomit operates service centers for the distribution in Italy of quarto plate and other products produced by ILVA/ILT. Therefore, respondents claim, the Department should determine that the interest contribution benefitted all of ILVA's production, not just the subject merchandise.

Petitioners also contend that the Department, during verification, obtained additional information regarding grants to ILVA/ILT under Decree 218 and Law 64. As noted above, Decree 218 and Law 64 were found to provide specific benefits in *Certain Steel Products from Italy.* Therefore, petitioners argue, these grants are countervailable subsidies. Respondents counter that, as their only justification for this request, petitioners cite the 1993 *Certain Steel from Italy* determination. *Certain Steel from Italy* was a best information available (BIA) determination which has no probative value and no connection to this investigation. Since petitioners have provided no information to support their request, and since the record demonstrates that ILVA received no benefits during the POI under these programs, ILVA/ILT argues that no countervailing duties should be imposed in connection with these programs.

Department's Position: The interest contributions received against the loan to Sidercomit represent a countervailable benefit to ILVA/ILT. We agree with petitioners that these interest contributions were tied to the production of plate and, as such, should be attributed to all of ILVA's plate sales, not just the plate produced by ILT. However, it is not clear from the record that we have total sales (both domestic and export) of plate over which to attribute these interest contributions. While we do have sales of subject merchandise produced by ILT and sold by ILVA, it is not clear that this figure reflects total sales of all plate by ILVA. Therefore, we have attributed the interest contributions to ILVA's total sales. We note that, even if we were to attribute the interest contributions to the sales figure for subject merchandise, the subsidy rate would be negligible.

With regard to Capital Grants under Decree 218 and Law 64, since the total amounts of the benefits received by ILVA/ILT and its predecessor companies would be expensed in the years of receipt, and since no grants were provided during the POI, we find it unnecessary to reach the issue of whether this program is countervailable.

Comment 22: ''Green Light'' Treatment of Subsidies

Petitioners state that, in the *Preliminary Determination,* the Department properly rejected the requests made by the GOI and ILVA/ILT that certain regional subsidies be considered non-countervailable under the green light provisions of section 771(5B) of the Act. Petitioners further point out that the GOI waived its green light claims at verification.

ILVA/ILT does not contest petitioners' argument that the GOI waived its prior request for green light treatment of certain programs in the context of this investigation.

Department's Position: At verification, GOI officials stated that they did not wish to further pursue the issue of green light treatment of certain subsidies, and that they were waiving their prior green light claim. Therefore, the Department will not grant green light treatment to any program in this investigation, and does not rule on the validity of the GOI's prior green light claim.

Comment 23: Imports Under Temporary Bond (TIB)

Respondents state that in response to the Department's preliminary countervailing duty determination, ILVA submitted to the Department a formal request that the Department harmonize its treatment of ILVA's temporary importation bond entries that were subsequently exported to Canada in the countervailing duty phase of this proceeding with its approach in the antidumping proceeding. In that request, ILVA informed the Department that, in the antidumping investigation, the Department excluded ILVA's TIB entries from its margin calculation because such entries were not ''entries for consumption.'' ILVA also argued that exclusion of ILVA's TIB entries from the antidumping investigation required that the Department exclude those same entries, for suspension of liquidation and cash deposit purposes, from the corresponding countervailing duty investigation. Respondents maintain that, to date, the Department has not responded to this request.

Respondents reaffirm their position that U.S. law requires that TIB entries be included in the Department's dumping margin calculation, because the TIB entries are ''entered for consumption.'' Respondents argue the statute thereby requires the Department to include TIB entries in its margin calculations, suspend liquidation on those entries, and collect estimated antidumping *and* countervailing duties. If, however, in the final determination of the antidumping investigation, the Department continues to treat ILVA's TIB entries as not being ''entries for consumption,'' respondents request that the Department harmonize both the antidumping and countervailing duty investigations. Specifically, ILVA requests that the Department issue instructions to Customs specifying that Customs not suspend liquidation of TIB entries and not collect estimated cash deposits of estimated countervailing duties on those entries.

Petitioners state that none of ILVA/ILT's arguments are relevant to the Department's final determination in this countervailing duty investigation. Any issues regarding the dumping margin calculations, according to petitioners, should be addressed in the separate antidumping investigation of carbon-quality steel plate from Italy and for purposes of this countervailing duty investigation, the Department should issue its standard instructions to the Customs Service regarding suspension of liquidation and assessment of duties.

Department's Position: We agree with petitioners that none of respondents' comments concerning the treatment of the TIB entries in question with respect to the dumping margin calculation is relevant to this proceeding. Further, respondents agree with the approach taken by the Department at the *Preliminary Determination* with respect to the suspension of liquidation of entries and collection of estimated countervailing duties since the Department directed Customs to suspend liquidation of all imports of subject merchandise from ILVA/ILT. With respect to entries subject to suspension of liquidation and collection of duties, we have continued to follow the approach to the TIB entries in question taken in the companion antidumping duty investigation for cut-to-length carbon steel plate from Italy. (See that notice for further discussion of how these entries will be treated in terms of assessment of duties.)

Comment 24: Mid-Year Convention

Petitioners discuss that the Department, in amortizing grants over time, continues to use a methodology which assumes that subsidies are received on the first day of the year. They argue that the Department's methodology is unreasonable and biased against a full subsidy offset, and is in violation of the law.

ILVA/ILT counters stating that it is the Department's long-standing policy to allocate benefits as if the subsidy was received at the beginning of the year of receipt. They discuss that in the final CVD regulations, the Department rejected the ''mid-year convention''; *i.e.*, the proposition that it should assume grants are received in the middle of the year. Respondents conclude that nothing in the petitioners' presentation merits a reconsideration of the Department's position against the mid-year convention.

Department's Position: The petitioners' approach to allocating subsidies was presented to the Department during the comment period of the CVD Regulations. *See* CVD Regulations, 63 FR at 65399. In finalizing its CVD Regulations, the Department considered and chose not to adopt the methodology proposed by petitioners. We continue to follow our policy as explained in the preamble to the CVD Regulations.

Verification

In accordance with section 782(i) of the Act, except where noted, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with the government and company officials, and examining relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the CRU of the Department of Commerce (Room B–099).

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual rate for each company investigated. We determine that the total estimated net countervailable subsidy is 26.12 percent *ad valorem* for ILVA/ILT. We determine that the total estimated net countervailable subsidy is 0.12 percent *ad valorem* for Palini & Bertoli, which is *de minimis.* Therefore, we determine that no countervailable subsidies are being provided to Palini & Bertoli for its production or exportation of certain cut-to-length carbon-quality steel plate.

In accordance with section 705(c)(5)(A)(i) of the Act, we have calculated an all-others rate which is ''an amount equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates and any rates determined entirely under section 776.'' On this basis, we determine that the all-others rate is 26.12 percent *ad valorem*, which is the rate calculated for ILVA/ILT.

Company	Net subsidy rate
ILVA/ILT	26.12% *ad valorem.*
Palini & Bertoli.	0.12% *ad valorem.*
All others	26.12% *ad valorem*

In accordance with our preliminary affirmative determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of certain cut-to-length carbon-quality from Italy, which were entered or withdrawn from warehouse, for consumption on or after July 26, 1999, the date of the publication of our preliminary determination in the **Federal Register**, with the exception of Palini & Bertoli, which was *de minimis* in the *Preliminary Determination.* In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after November 23, 1999, but to continue the suspension of liquidation of entries made between July 26, 1999 and November 22, 1999.

We will reinstate suspension of liquidation under section 706(a) of the Act for all entries except for Palini & Bertoli 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 above. 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.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, 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

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: December 13, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33237 Filed 12–28–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–817]

Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From France

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

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai and Gregory Campbell, Office of Antidumping/Countervailing Duty Enforcement, Group I, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482–4087 or 482–2239, respectively.

Final Determination

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers or exporters of certain cut-to-length carbon-quality plate (carbon plate) from France. For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section of this notice.

Petitioners

The petition in this investigation was filed by the Bethlehem Steel Corporation, U.S. Steel Group, Gulf States Steel, Inc., IPSCO Steel Inc., and the United Steel Workers of America (collectively referred to hereinafter as the ''petitioners'').

Case History

Since the publication of our preliminary determination in the **Federal Register** (*see Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from France*, 64 FR 40430 (July 26, 1999) (*Preliminary Determination*)), the following events have occurred:

On September 21, 1999, we initiated an investigation of whether advances by the Government of France (GOF) to the Societe pour le Developpement de l'Industrie et de l'Emploi (SODIE) through Usinor since 1991 provided countervailable benefits to Usinor (*see* Memorandum on Inclusion of Previously Investigated Programs in the Countervailing Duty Investigation of French Steel Plate, September 21, 1999). We issued questionnaires on SODIE advances to the GOF and Usinor on October 18, 1999. The GOF and Usinor responded to the SODIE questionnaires on November 3, 1999.

On October 7–15, 1999, we verified the responses of Usinor, Sollac S.A. (Sollac), Creusot Loire Industrie S.A.(CLI), GTS Industries S.A. (GTS) and the GOF (collectively known as ''the respondents''). Verification took place at: Usinor and the GOF in Paris, France; GTS in Dunkirk, France; and AG der Dillinger Huttenwerke (Dillinger), the parent company of GTS, in Dillingen, Germany.

The petitioners and the respondents submitted case briefs on November 12 , 1999. On November 18, 1999, the petitioners, the respondents and Dillinger submitted rebuttal briefs. A public hearing was held November 22, 1999.

Scope of Investigation

The products covered by this scope are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils).

Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of this investigation unless otherwise specifically excluded. The following products are specifically excluded from this investigation: (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to this investigation is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to our regulations as codified at 19 CFR Part 351 (1998) and *Countervailing Duties; Final Rule*, 63 FR 65348 (November 25, 1998) (CVD Regulations).

Injury Test

Because France is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from France materially injure, or threaten material injury to, a U.S. industry. On April 8, 1999, the ITC published its preliminary 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 France of the subject merchandise. See *Certain Cut-to-Length Steel Plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and Macedonia; Determinations*, 64 FR 17198 (April 8, 1999). The ITC will make its final injury determination within 45 days of this final determination by the Department.

Period of Investigation

The period for which we are measuring subsidies (the POI) is calendar year 1998.

Company History

The GOF identified Usinor, Sollac, CLI, and GTS as the only producers of the subject merchandise that exported to the United States during the POI. Sollac and CLI are wholly-owned subsidiaries of Usinor (a holding company), and GTS is partially owned by Usinor.

Usinor

In 1984, the GOF was a majority shareholder of Usinor. In 1986, Usinor was merged with another state-owned company, Sacilor, into a single company called Usinor Sacilor. Usinor Sacilor was 100 percent owned by the GOF.

In 1995, Usinor Sacilor was privatized, principally through the public sale of shares. In October 1997, the GOF reduced its direct shareholdings to 1 percent. As of August 1998, the GOF has no direct ownership interest in Usinor but retains a minority indirect interest in the company.

GTS

Prior to 1992, GTS was 89.73 percent owned by Sollac, a subsidiary of Usinor. In 1992, Sollac transferred its shares in GTS to Dillinger. In return, Dillinger transferred to Sollac shares it held in Sollac of an equivalent value. At that time, Dillinger was majority owned by DHS-Dillinger Hutte Saarstahl AG (DHS), a German holding company, which, in turn, was 70 percent owned by Usinor.

In 1996, Usinor reduced its interest in DHS from 70 to 48.75 percent. At that time, DHS owned 95.3 percent of Dillinger, which in turn, owned 99 percent of GTS.

Attribution of Subsidies

The GOF has identified three producers of subject merchandise in this investigation: Sollac, CLI and GTS. During the POI, both Sollac and CLI were wholly-owned by and consolidated subsidiaries of Usinor. With respect to GTS, prior to 1996, it was majority owned by Usinor since Usinor held 70 percent of DHS, which in turn, held approximately 95 percent of Dillinger, GTS' direct parent company. However, since 1996 and during the entire POI, Usinor's interest in DHS has been 48.75 percent, i.e., slightly less than a majority.

The issue before the Department is whether the subsidies granted to Usinor are attributable to GTS given that GTS is no longer majority-owned by Usinor. Section 351.525 of the *CVD Regulations* states that the Department will attribute subsidies received by two or more corporations to the products produced by those corporations where cross-ownership exists. According to section 351.525(b)(6)(vi) of the *CVD Regulations*, cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation in essentially the same ways it can use its own assets. The regulations state that this standard will normally be met where there is a majority voting ownership interest between two corporations. The Preamble to the *CVD Regulations* identifies situations where cross-ownership may exist even though there is less than a majority voting interest between two corporations: ''in certain circumstances, a large minority interest (for example, 40 percent) or a 'golden share' may also result in cross-ownership'' (63 FR at 65401).

In the *Preliminary Determination*, we found that there was no cross-ownership between Usinor and GTS. Interested parties commented on cross-ownership and attribution (see Comment 1 below). Based on our analysis of information on the record of this proceeding and comments by interested parties, we continue to find that Usinor's ownership interest in DHS, the holding company of GTS' parent, Dillinger, is insufficient to establish cross-ownership between Usinor and GTS during the POI. We base this determination on the following: (1) Usinor has less than a majority voting ownership in DHS; (2) Usinor does not control GTS directly or indirectly; and (3) although GTS uses Usinor affiliates to transport and sell some of its merchandise, there is no evidence that Usinor controls the sales that its affiliates make for GTS. For more details, see the Department's position on Comment 1 below.

Therefore, for this final determination, we have calculated a separate net subsidy rate for GTS. However, since GTS was part of the Usinor Group for much of the allocation period, we have attributed a portion of subsidies received by Usinor through 1996 to GTS (see the ''Change in Ownership'' section below).

Change in Ownership

In the General Issues Appendix (GIA) attached to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217, 37226 (July 9, 1993), we applied a new methodology with respect to the treatment of subsidies received prior to the sale of the company (privatization) or the spinning-off of a productive unit. Under this methodology, we estimate the portion of the purchase price attributable to prior subsidies. We compute this by first dividing the privatized company's subsidies by the company's net worth for each year during the period beginning with the earliest point at which nonrecurring subsidies would be attributable to the POI (i.e., in this case, 1985 for Usinor) and ending one year prior to the privatization. We then take the simple average of the ratios. The simple average of these ratios of subsidies to net worth serves as a reasonable surrogate for the percent that subsidies constitute of the overall value of the company. Next, we multiply the average ratio by the purchase price to derive the portion of the purchase price attributable to repayment of prior subsidies. Finally, we reduce the benefit streams of the prior subsidies by the ratio of the repayment amount to the net present value of all remaining benefits at the time of privatization.

With respect to spin-offs, consistent with the Department's position regarding privatization, we analyze the spin-off of productive units to assess what portion of the sale price of the productive units can be attributable to payment for prior subsidies. To perform this calculation, we first determine the amount of the seller's subsidies that the spun-off productive unit could potentially take with it. To calculate this amount, we divide the value of the assets of the spun-off unit by the value of the assets of the company selling the unit. We then apply this ratio to the net present value of the seller's remaining subsidies. We next estimate the portion of the purchase price going towards payment for prior subsidies in accordance with the privatization methodology outlined above.

As discussed above in the ''Case History'' section of this notice, two important changes of ownership have occurred with respect to the producers of the subject merchandise. First, Usinor's ownership of GTS has declined over time so that Usinor is no longer a majority owner of GTS. Second, Usinor has been privatized. In addition, Usinor sold (in whole or in part) various productive units: Ugine (1994); Centrale Siderurgique de Richemont (CSR) (1994); Entreprise Jean LeFebvre (1994); and various productive units to FOS-OXY (1993).

To determine the amount of subsidies that potentially transfers with a spun off productive unit, we have measured that productive unit's assets in relation to the subsidized assets of the seller (see Comment 8 below). In particular, because we normally attribute subsidies to production occurring in the jurisdiction of the subsidizing government (see section 351.525(b)(7)), we believe we should calculate the share of subsidies that can potentially transfer with the sale of Usinor's French productive units in relation to Usinor's total French assets (as opposed to Usinor's total worldwide assets). As explained below, we lack the information to make this calculation in this determination, but for the spin-off of GTS, we have developed a substitute measure for that amount based on sales.

Using this information, we have applied the spin-off and privatization methodologies described in the GIA. Regarding spin offs, we first determined the portion of subsidies that potentially transfers with the spun-off unit based on that unit's share of assets (or French sales). For the latter three transactions described above (involving CSR, Entreprise Jean LeFebvre, and FOS-OXY), the entire productive unit was transferred. Consequently, the entire amount of subsidies attributable to these productive units were potentially transferred and, also, potentially reallocated to Usinor through the payment for these companies. Similarly, the privatization of Usinor involved virtually all of Usinor's shares and, hence, the entire amount of Usinor's remaining subsidies potentially transferred with Usinor and, also, were potentially repaid to the seller.

The sales of Ugine and GTS present variations from the sales discussed above. While the sales of Ugine and GTS are spin offs of productive units, these units have been only partially spun off. Moreover, the sale of Ugine must be distinguished from the sale of GTS because after Usinor's sale of Ugine's shares in 1994, Usinor continued to be the majority owner of Ugine. While it would be possible to apply the change-in-ownership methodology to this transaction (and we did so in *French Stainless*), there is no impact on the subsidy to Usinor. This is because even after the partial spin off, Ugine continued to be part of the consolidated Usinor Group. Thus, the total amount of subsidies within the Usinor Group would not diminish as a result of the partial spin off of Ugine, nor would Usinor's denominator change. Since Usinor's ownership in Ugine did not diminish further after 1994 (indeed, Usinor subsequently repurchased the Ugine shares it had sold) and we have not applied the change-in-ownership methodology to Usinor's repurchase of Ugine's shares (*see French Stainless*), there is no need to perform the change-in-ownership calculation for the partial spin off of Ugine.

GTS' situation by the POI was very different from that of Ugine. As discussed above, after 1996, GTS was no longer part of the consolidated Usinor Group. Therefore, any subsidies properly attributed to GTS would no longer be counted among Usinor's subsidies, nor would GTS' sales be included in Usinor's sales. To reflect this change in GTS' status, we have applied the spin off methodology twice. First, we have applied the methodology to the 1992 transfer of GTS shares from Sollac to DHS. We have done this by determining the subsidies potentially allocable to GTS in 1992. We have then reduced this total by the percentage of ownership in GTS that transferred outside the Usinor Group in 1992 to arrive at the amount of subsidies subjected this amount to the repayment methodology. We note that Usinor continued to be a majority owner of GTS after the 1992 transaction and, hence, that Usinor and GTS would continue to be treated as a single company. However, unlike the situation with Ugine, it is necessary for us to apply the change-in-ownership methodology to this 1992 transaction. This is because we have to calculate a subsidy rate for 1998, a point in time when Usinor and GTS are being treated as separate companies. If we failed to apply the change-in-ownership methodology to the 1992 transaction, and only applied it to the 1996 transaction, the amount paid for GTS in 1996 (assuming we had that information) would not be commensurate with the total amount of ownership that had transferred over time.

The second application of the change-in-ownership methodology to Usinor/GTS is also a partial spin off. In recognition of the fact that this transaction reduces Usinor's ownership of GTS below 50 percent and our finding that Usinor does not direct or control the use of GTS' assets (see Comment 1 below), with the result that GTS's sales will no longer be treated as Usinor's sales, we believe the spin off methodology requires us first to assign to GTS its full share of Usinor subsidies (reduced in proportion to the amount of GTS sold in 1992). The amount of these subsidies that are then reallocated to Usinor is calculated taking into account the percentage change in Usinor's ownership of GTS and the price paid by the new owner of the GTS shares.

The Use of Facts Available

Certain information requested of respondents was not provided in this investigation. Specifically, Usinor failed to respond to the Department's questions concerning creditworthiness for the years 1992 though 1995. The GOF failed to provide information on the distribution of investment and operating subsidies (other than those from the water boards) received by Usinor. Nor did it demonstrate at verification that it had provided information on use of ESF funding by all Usinor group members. Finally, the EC did not provide information with respect to the distribution of European Social Fund (ESF) funding.

Section 776(a)(2) of the Act requires the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. In such cases, the Department must use the facts otherwise available in reaching the applicable determination. Because the EC, the GOF and Usinor failed to submit the information that was specifically requested by the Department, we have based our determination for these programs on the facts available.

In accordance with section 776(b) of the Act, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available when the party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such adverse inference may include reliance on information derived from (1) the petition; (2) a final determination in a countervailing duty or an antidumping investigation; (3) any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or (4) any other information placed on the record. See 19 C.F.R. 351.308(c). In the absence of information from the EC, the GOF and Usinor, we consider the February 16, 1999 petition, as well as our findings in *French Stainless* and other information gathered during the course of this investigation to be appropriate bases for a facts available countervailing duty rate calculation.

The Statement of Administrative Action accompanying the URAA clarifies that information from the petition and prior segments of the proceeding is ''secondary information.'' See Statement of Administrative Action, accompanying H.R. 5110 (H.R. Doc. No. 103–316) (1994) (SAA), at 870. If the Department relies on secondary information as facts available, section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate such information using independent sources reasonably at its disposal. The SAA further provides that to corroborate secondary information means simply that the Department will satisfy itself that the secondary information to be used has probative value. However, where corroboration is not practicable, the Department may use uncorroborated information.

We relied upon *French Stainless* regarding Usinor's creditworthiness during the period 1992 through 1995. With respect to ESF funding and investment and operating subsidies (other than those provided by the water boards) for which we did not receive complete information from the respondents, we relied upon findings in *French Stainless* and information in the petition indicating that these programs are specific. Based on our review of the findings in *French Stainless* and the information in the petition, we find that this secondary information has probative value and, therefore, the information has been corroborated.

Subsidies Valuation Information

Allocation Period

The current investigation includes untied, non-recurring subsidies to Usinor that were found to be countervailable in *Final Affirmative Countervailing Duty Determinations: Certain Steel Products From France,* 58 FR 37304 (July 9, 1993) *(French Certain Steel):* PACS, FIS, and Shareholders' Advances. For the *Preliminary Determination,* we allocated those subsidies over 14 years because we have already assigned this company-specific allocation period to those subsidies in other proceedings. See *French Stainless.* See also Final Results of

Redetermination Pursuant to Court Remand on General Issue of Allocation, British Steel plc, v. United States, Consol. Ct. No. 93–09–00550–CVD. After considering interested parties comments on this issue, we have continued to apply a 14-year allocation period to these subsidies for this final determination. For further details, see Comment 13 below.

We have found no other allocable non-recurring subsidies received by Usinor and GTS in the instant proceeding.

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 section 351.595 of the *CVD Regulations*.

Usinor was found to be uncreditworthy from 1982 through 1988 in *French Certain Steel,* 58 FR at 37306. No new information has been presented in this investigation that would lead us to reconsider these findings. Therefore, we continue to find Usinor uncreditworthy from 1985 through 1988.

In *Notice of Initiation of Countervailing Duty Investigations: Certain Cut-To-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea,* 64 FR 12996 (March 16, 1999), we stated that the petitioners provided sufficient information to lead us to believe or suspect that Usinor was uncreditworthy from 1992 through 1995. Therefore, we requested Usinor to provide data that would allow us to analyze its creditworthiness during this period.

Usinor did not provide the information requested by the Department citing the ''formidable burdens which would be involved in responding to the Department's Creditworthiness questions.'' Consequently, the Department has decided to use facts available in accordance with section 776 (a)(2)(A) of the Act. Section 776(b) of the Act permits the Department to draw an inference that is adverse to the interests of an interested party if that party has ''failed to cooperate by not acting to the best of its ability to comply with a request for information.'' In this investigation, Usinor refused to answer on more than one occasion, the creditworthiness questions in the Department's original and supplemental questionnaires. Therefore, the Department determines it appropriate to use an adverse inference in selecting the discount rate to be applied in these years.

Benchmarks for Loans and Discount Rates

In accordance with sections 351.505 (a) and 351.524 (c)(3)(i) of the *CVD Regulations,* we used Usinor's company-specific cost of long-term, fixed-rate loans, where available, for loan benchmarks and discount rates for years in which Usinor was creditworthy. In the *Preliminary Determination* for years where Usinor was creditworthy and a company-specific rate was not available, we used the average yields on long-term private-sector bonds in France as published by the OECD. Interested parties commented on the calculation of the non-company-specific benchmark rate. In response to these comments, we have revised our benchmark for this final determination. Specifically, we are using an average of the following long-term interest rates: medium-term credit to enterprises (MTCE), and equipment loan rates as published by the OECD, cost of credit rates published in the *Bulletin of Banque de France,* and private sector bond rates as published by the International Monetary Fund. (See Comment 18 below for further discussion of this issue.)

For the years in which Usinor was uncreditworthy (see ''Creditworthiness'' section above), we calculated the discount rates in accordance with section 351.524(c)(3)(ii) of the *CVD Regulations.* To construct these benchmark rates, we used the formula described in section 351.505(a)(3)(iii) of the *CVD Regulations.* This formula requires values for the probability of default by uncreditworthy and creditworthy companies. For the probability of default by an uncreditworthy company, we relied on the average cumulative default rate reported for Caa to C-rated category of companies as published in Moody's Investors Service, ''Historical Default Rates of Corporate Bond Issuers, 1920–1997,'' (February 1998). For the probability of default by a creditworthy company we used the average cumulative default rates reported for the Aaa to Baa-rated categories of companies as reported in this study.[1] See Memorandum to Case File; Clarification of Moody's Default Data (December 13, 1999).

Based upon our verification and our analysis of the comments received from interested parties, we determine the following:

I. Programs Determined To Be Countervailable

GOF Programs

A. Loans With Special Characteristics (PACS)

A plan was agreed upon in 1978 to help the principal steel companies, Usinor, Sacilor, Chatillon-Neuves-Maisons, and their subsidiaries, restructure their massive debt. This plan entailed the creation of a steel amortization fund, called the Caisse d'Amortissement pour l'Acier (CAPA), for the purpose of ensuring repayment of funds borrowed by these companies prior to June 1, 1978. In accordance with the restructuring plan of 1978, bonds previously issued on behalf of the steel companies and pre-1978 loans from Credit National and Fonds de Developpement Economique et Social (FDES) were converted into ''loans with special characteristics,'' or PACS. As a result of this process, the steel companies were no longer liable for the loans and bonds, but did take on PACS obligations.

In 1978, Usinor and Sacilor converted 21.1 billion French francs (FF) of debt into PACS. From 1980 to 1981, Usinor and Sacilor issued FF8.1 billion of new PACS. PACS in the amount of FF13.8 billion, FF12.6 billion and FF2.8 billion were converted into common stock in 1981, 1986, and 1991, respectively.

In *French Stainless, French Certain Steel,* and *Final Affirmative Countervailing Duty Determinations: Certain Hot Rolled Lead and Bismuth Carbon Steel Products from France,* 58 FR 6221 (January 27, 1993) *(French Bismuth),* the Department determined that the conversion of PACS to common stock in 1986 constituted a countervailable equity infusion. This equity infusion was limited to Usinor Sacilor and was, therefore, specific within the meaning of section 771(5A)(D)(i) of the Act. Also, this equity infusion provided a financial contribution to Usinor Sacilor within the meaning of section 771(5)(D)(i) of the Act. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our earlier finding. Therefore, we determine that a countervailable benefit exists in the amount of the 1986 equity infusion in accordance with section 77(5)(A) of the Act.

We have treated the 1986 equity infusion as a non-recurring grant

[1] We note that since publication of the *CVD Regulations,* Moody's Investors Service no longer reports default rates for Caa to C-rated category of companies. Therefore for the calculation of uncreditworthy interest rates, we will continue to rely on the default rates as reported in Moody Investor Service's publication, February 1998.

received in the year the PACS were converted to common stock. Using the allocation period of 14 years, the 1986 conversion of PACS continues to yield a countervailable benefit during the POI. We used an uncreditworthy discount rate to allocate the benefit of the equity infusion over time. Additionally, we followed the methodology described in the ''Change in Ownership'' section above to determine the amounts of the equity infusion appropriately allocated to Usinor and GTS. We divided these amounts by Usinor's and GTS' total sales of French-produced merchandise during the POI. Accordingly, we determine the net subsidy rate to be 1.35 percent ad valorem for Usinor and 1.70 percent ad valorem for GTS.

B. Shareholders' Advances

The GOF provided Usinor and Sacilor grants in the form of shareholders' advances in 1985 and 1986. The purpose of these advances was to finance the revenue shortfall needs of Usinor and Sacilor while the GOF planned for the next major restructuring of the French steel industry. These shareholders' advances carried no interest and there was no precondition for receipt of these funds. These advances were converted to common stock in 1986.

In *French Stainless, French Certain Steel,* and *French Bismuth,* the Department determined that the shareholders' advances constituted countervailable grants because no shares were received for them. These grants were limited to Usinor and Sacilor and were, therefore, specific within the meaning of section 771(5A)(D)(i) of the Act. Also, these grants provided a financial contribution to Usinor and Sacilor within the meaning of section 771(5)(D)(i) of the Act. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our earlier finding. Therefore, we determine these grants provide a countervailable benefit in accordance with section 77(5)(A) of the Act.

Because the 1986 shareholders' advance was less than 0.5 percent of Usinor's sales of French-produced merchandise during the year of approval, this grant was expensed in the year of receipt. See *CVD Regulations,* 64 FR at 65415.

We have treated the 1985 shareholders' advance as a non-recurring subsidy. Using the allocation period of 14 years, this shareholders' advance continues to provide a countervailable benefit during the POI. We used an uncreditworthy discount rate to allocate the benefits of the 1985 shareholders' advance over time. Additionally, we followed the methodology described in the ''Change in Ownership'' section above to determine the amount of the grant appropriately allocated to Usinor and GTS. We divided these amounts by Usinor's and GTS'' total sales of French-produced merchandise during the POI. Accordingly, we determine the net subsidy rate to be 0.54 percent ad valorem for Usinor and 0.68 percent ad valorem for GTS.

C. Steel Intervention Fund (FIS)

The 1981 Corrected Finance Law granted Usinor and Sacilor the authority to issue convertible bonds. In 1983, the Fonds d'Intervention Siderurgique (FIS), or steel intervention fund, was created to implement that authority. In 1983, 1984, and 1985, Usinor and Sacilor issued convertible bonds to the FIS, which in turn, with the GOF's guarantee, floated the bonds to the public and to institutional investors. These bonds were converted to common stock in 1986 and 1988.

In *French Stainless, French Certain Steel* and *French Bismuth,* the Department determined that the conversions of FIS bonds to common stock in 1986 and 1988 were countervailable equity infusions. These equity infusions were limited to Usinor Sacilor and were, therefore, specific within the meaning of section 771(5A)(D)(i) of the Act. Also, these equity infusions provided a financial contribution to Usinor Sacilor within the meaning of section 771(5)(D)(i) of the Act. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our earlier finding. Therefore, we determine that a countervailable benefit exists in the amount of the 1986 and 1988 equity infusions in accordance with section 77(5)(A) of the Act.

We have treated the 1986 and 1988 equity infusions as non-recurring subsidies received in the years the FIS bonds were converted to common stock. Using the allocation period of 14 years, the 1986 and 1988 FIS bond conversions continue to yield a countervailable benefit during the POI. We used an uncreditworthy discount rate to allocate the benefits of the equity infusions over time. Additionally, we followed the methodology described in the ''Change in Ownership'' section above to determine the amount of the equity infusion appropriately allocated to Usinor and GTS. Dividing these amounts by Usinor's and GTS' total sales of French-produced merchandise during the POI, we determine the net subsidy rate to be 3.56 percent ad valorem for Usinor and 4.48 percent ad valorem for GTS.

D. Investment/Operating Subsidies

During the period 1987 through 1998, Usinor received a variety of small investment and operating subsidies from various GOF agencies as well as from the European Coal and Steel Community (ECSC). The subsidies were provided for research and development, projects to reduce work-related illnesses and accidents, projects to combat water pollution, etc. The subsidies are classified as investment, equipment, or operating subsidies in the company's accounts, depending on how the funds are used.

In *French Stainless,* the Department determined that the funding provided to Usinor by the water boards (les agences de l'eau) and certain work/training grants were not countervailable. Therefore, we are not investigating those programs in this proceeding.

For the remaining amounts in these accounts, including certain work/training grants that differed from those found not countervailable in *French Stainless,* the GOF did not provide any information regarding the distribution of funds, stating that, in the GOF's view, the total amount of investment and operating subsidies received by Usinor was ''insignificant and would * * * be expensed.'' Given the GOF's failure to provide the requested information, we are using ''facts available'' in accordance with section 776(a)(2)(A) of the Act. Further, section 776(b) of the Act permits the Department to draw an inference that is adverse to the interests of an interested party if that party has ''failed to cooperate by not acting to the best of its ability to comply with a request for information.'' In this investigation, the GOF has refused to answer the Department's repeated requests for data regarding the distribution of grant funds. Therefore, the Department determines it appropriate to use an adverse inference in concluding that the investment and operating subsidies (except those provided by the water boards and certain work/training contracts) are specific within the meaning of section 771(5A)(D) of the Act.

We also determine that the investment and operating subsidies provide a financial contribution, as described in section 771(5)(D)(i) of the Act, in the form of a direct transfer of funds from the GOF and the ECSC to Usinor, providing a benefit in the amount of the grants.

The investment and operating subsidies provided in the years prior to the POI were less than 0.5 percent of Usinor's sales of French-produced merchandise in those years. Therefore, we have expensed these grants in the years of receipt, in accordance with section 351.524 (b)(2) of the *CVD Regulations.* To calculate the benefit received during the POI, we divided the subsidies received by Usinor in the POI by Usinor's total sales of French-produced merchandise during the POI. Accordingly, we determine Usinor's net subsidy rate to be 0.11 percent ad valorem. GTS did not receive any of these investment and operating subsidies during the POI.

E. Subsidies Provided Directly to GTS

GTS' 1996 condensed financial statements include a ''capital subsidy'' in the amount of FF 2.1 million. GTS claims that this amount reflects the unamortized balance of a grant that was provided to GTS pursuant to an agreement dated December 29, 1987, between the GOF and Usinor. The grant was given to support the development of a machine for the accelerated cooling of heavy plate during the hot-rolling process. The grant was provided in two disbursements made in 1988 and 1990.

The GOF responded to the Department's questions on this capital subsidy stating that because of its size, the amounts would be expensed in a period outside the POI. Therefore, the GOF did not provide information on the distribution of other grants that might have been given under the same program.

The total amount approved in 1987 was less than 0.5 percent of Usinor's sales of French-produced heavy plate in 1987. Therefore, we determine that these grants did not confer a countervailable subsidy during the POI.

F. Myosotis Project

Since 1988, Usinor has been developing a continuous thin-strip casting process, called ''Myosotis,'' in a joint venture with the German steelmaker, Thyssen. The Myosotis project is intended to eliminate the separate hot-rolling stage of Usinor's steelmaking process by transforming liquid metal directly into a coil between two to five millimeters thick.

To assist this project, the GOF, through the Ministry of Industry and Regional Planning and L'Agence pour la Maıtrise de L'Energie (AFME), entered into three agreements with Usinor Sacilor (in 1989) and Ugine (in 1991 and 1995). The first agreement, dated December 27, 1989, provided three payments in 1989, 1991, and 1993. The second agreement, between Ugine and the AFME, covered the cost of some equipment for the project. This agreement resulted in two disbursements to Ugine from the AFME in 1991 and 1992. The third agreement, with Ugine, dated July 3, 1995, provided interest-free reimbursable advances for the final two-year stage of the project, with the goal of casting molten steel from ladles to produce thin strips. The first reimbursable advance under this agreement was made in 1997. Repayment of one-third of the reimbursable advance is due July 31, 1999. The remaining two-thirds are due for repayment on July 31, 2001.

In *French Stainless,* the Department determined that funding associated with the 1989 and 1991 contracts constituted countervailable subsidies within the meaning of section 771(5) of the Act. Since the GOF did not provide any information indicating that the grants were provided to other companies in France, the Department determined that the grants were specific within the meaning of section 771(5A)(D) of the Act. Also, the Department found that these grants provided a financial contribution within the meaning of section 771(5)(D)(i) of the Act. No new information has been submitted to warrant a reconsideration of our earlier finding. Therefore, we continue to find that the grants associated with the 1989 and 1991 Myosotis contracts constitute countervailable subsidies within the meaning of section 771(5) of the Act. Because the amounts received under the 1989 and 1991 contracts were less than 0.5 percent of Usinor's sales of French-produced merchandise during their respective year of approval, these grants were expensed in the years of receipt. See *CVD Regulations,* 64 FR at 65415.

With respect to the reimbursable advance received in 1997, the GOF has requested that we find this subsidy non-countervailable under section 771(5B)(B)(ii)(II) of the Act, i.e., that this is a green-light subsidy. We have determined that we do not need to address the issue whether this subsidy is countervailable because the benefit of the reimbursable advance during the POI is less than 0.5 percent. As stated in the Preamble to the *CVD Regulations*:

> [W]e will not consider claims for green light status if the subject merchandise did not benefit from the subsidy during the period of investigation or review. Instead, consistent with the Department's existing practice, the green light status of a subsidy will be considered only in an investigation or review of a time period where the subject merchandise did benefit from the subsidy.

See *CVD Regulations,* 63 FR at 65388.

In accordance with section 351.505(d)(1) of the *CVD Regulations,* we are treating this reimbursable advance as a contingent liability loan because the GOF has indicated that repayment of the loan is contingent on the success of the project. We used as our benchmark a long-term fixed-rate loan consistent with section 351.505(a)(2)(iii) of the Department's regulations. Since Usinor would have been required to make an interest payment on a comparable commercial loan during the POI (*see French Stainless*), we calculated the benefit from the reimbursable advance as the amount that would have been due during the POI. Dividing these interest savings by Usinor's sales of French-produced merchandise during the POI, we find the net subsidy rate to be 0.00 percent ad valorem for Usinor. GTS did not receive subsidies under this program.

EC Programs

European Social Fund

The European Social Fund (ESF), one of the Structural Funds operated by the EC, was established in 1957 to improve workers' employment opportunities and to raise their living standards. The main purpose of the ESF is to make employing workers easier and to increase the geographical and occupational mobility of workers within the European Union. It accomplishes this by providing support for vocational training, employment, and self-employment.

Like the other EC Structural Funds, the ESF seeks to achieve six different objectives explicitly identified in the EC's framework regulations for Structural Funds: Objective 1 is to promote development and structural adjustment in underdeveloped regions; Objective 2 is to assist areas in industrial decline; Objective 3 is to combat long-term unemployment and to create jobs for young people and people excluded from the labor market; Objective 4 is to assist workers adapting to industrial changes and changes in production systems; Objective 5 is to promote rural development; and Objective 6 is to aid sparsely populated areas in northern Europe.

The member states are responsible for identifying and implementing the individual projects that receive ESF financing. The member states also must contribute to the financing of the projects. In general, the maximum benefit provided by the ESF is 50 percent of the project's total cost for projects geared toward Objectives 2, 3, 4, and 5b (see below), and 75 percent of the project's total cost for Objective 1 projects. For all programs implemented under Objective 4 in France, 35 percent of the funding comes from the EC, 25 percent from the GOF, and the remaining 40 percent from the company.

According to the questionnaire responses, CLI received an ESF grant for an Objective 4 project. The amount received during the POI was a portion of a larger ESF grant authorized for CLI in 1996.

The Department considers worker assistance programs to provide a countervailable benefit to a company when the company is relieved of a contractual or legal obligation it would otherwise have incurred. See section 357.513(a) of the *CVD Regulations*. Only limited information was provided in the questionnaire responses about the purpose of this grant; therefore, we are unable to determine whether it relieved CLI of any legal or contractual obligations. With regard to specificity, the EC has not provided complete information about the distribution of ESF grants. In addition, the GOF was unable to show at verification that it had reported all ESF grants to Usinor Group companies during the POI.

Consequently, the Department has decided to use facts available in accordance with section 776(a)(2)(A) of the Act. Section 776(b) of the Act permits the Department to draw an inference that is adverse to the interests of an interested party if that party has ''failed to cooperate by not acting to the best of its ability to comply with a request for information.'' Since Usinor, the GOF and the EC failed to provide complete information to the Department, we determine it appropriate to use an adverse inference in concluding that: CLI was relieved of an obligation in receiving the ESF grant; the ESF grant is specific within the meaning of section 771(5A)(D) of the Act and that the benefit was tied to goods produced by CLI. Also, we find the grant to be a financial contribution within the meaning of section 771(5)(D)(i) of the Act. Based on the foregoing, we determine that the 1998 ESF grant is countervailable within the meaning of section 771(5) of the Act.

The Department normally expenses the benefits from worker-related subsidies in the year in which the recipient is relieved of a payment it would normally incur. See CVD Regulations, 63 FR at 65412. Dividing the amount received by CLI in 1998 by CLI's 1998 sales of French-produced merchandise yields a net subsidy rate of 0.00 percent ad valorem for Usinor. GTS did not benefit from ESF funding during the POI.

II. Programs Determined Not To Be Countervailable

GOF Programs

A. 1994 Purchase of Power Plant for Excessive Remuneration

The Department initiated an investigation of this program prior to the issuance of the final determination of *French Stainless.* This program was subsequently found to be not countervailable in *French Stainless.*

B. GOF Conditional Advance on New Steel Development

Usinor received an interest-free conditional advance from the GOF. This advance was provided through the Ministry of Industry to support a project aimed at developing a new type of steel for use in the production of catalytic converters. Since the GOF conditional advance is for a project aimed at developing a new type of steel which does fall within the scope of this proceeding, we find that this program is tied to non-subject merchandise and not countervailable with respect to this investigation only.

III. Other Programs

A. Electric Arc Furnaces

In 1996, the GOF agreed to provide assistance in the form of reimbursable advances to support Usinor's research and development efforts regarding electric arc furnaces. The first disbursal of funds occurred on July 17, 1998. Repayment of the reimbursable advances will begin on July 31, 2002.

Since these advances may someday be repaid, we are treating them as contingent liability loans. Section 351.505(d)(1) of the *CVD Regulations*. Under the methodology specified in the Department's new regulations, the benefit occurs when payment would have been made on a comparable commercial loan. Section 351.505(b) of the *CVD Regulations*. As stated in *French Stainless*, Usinor would make interest payments on its long-term loans on an annual basis and such a payment schedule would not be considered atypical of general French banking practices. See *French Stainless*, 64 FR at 30780. Accordingly, we have assumed that a payment on a comparable commercial loan taken out by Usinor at the time of this reimbursable advance would not be due until the year 1999.

Given that no payment would be due during the POI, we determine that there is no benefit to Usinor from these reimbursable advances during the POI. Consequently, we have not addressed whether this reimbursable advance is countervailable.

B. Post-1991 SODIE Advances

As discussed in the ''Case History'' section of this notice, the decision to investigate post-1991 SODIE advances was made at a late date in this investigation. Because of this, we were not able to seek clarification of the information supplied in the GOF and Usinor responses. Therefore, we are not making a determination on the countervailability of the post-1991 SODIE advances in this investigation. If this proceeding results in a countervailing duty order, we will examine the post-1991 SODIE advances in an administrative review, if requested. See Comment 16 below.

IV. Programs Determined To Be Not Used

Based on the information provided in the responses and our findings at verification, we determine that the responding companies did not apply for or receive benefits under the following programs during the POI:

GOF Programs

A. Shareholders Guarantees

B. Long-Term Loans From CFDI

EC Programs

A. Resider and Resider II Program

B. ECSC Article 54 Loans

C. ECSC Article 56(2)(b) Redeployment/Readaptation Aid

D. Grants From the European Regional Development Fund (ERDF)

Interested Party Comments

Comment 1: Treatment of GTS

The petitioners argue that the Department's preliminary decision to treat GTS as separate from Usinor was unreasonable, inconsistent with past Department practice and contrary to law. The petitioners maintain that GTS should continue to be treated as part of the Usinor group, along with the other two producers of subject merchandise (*i.e.*, CLI and Sollac), with all receiving a single subsidy rate for the Usinor group.

The petitioners base this on their claim that the Usinor group was and remains fully vertically integrated, with ownership of raw materials, basic production facilities, steel processing operations, service centers, marketing arms and distribution services fully consolidated. Furthermore, the petitioners argue that calculating a single subsidy rate for the group is consistent with past practice. The petitioners state that in *French Certain Steel, French Bismuth,* and *French Stainless,* the Department treated the Usinor group, not the individual group producers, as the relevant respondent; consequently, GTS' subsidies were included in the Usinor numerator and its sales were included in the Usinor denominator.

The petitioners argue that despite Usinor's reduction of its indirect ownership interest in GTS below the 50 percent level in 1996, the reasons for approaching Usinor as a group have not changed; namely: (1) GTS and Usinor share common marketing and transportation services which provide a vehicle for the transmittal of subsidies and the potential for export shifting should the Department assign different rates, and (2) GTS does not have audited financial statements for all of the years that the Department would require in order to conduct an analysis leading to a separate subsidy rate.

The petitioners dispute the Department's application of its cross-ownership regulation in the Preliminary Determination. The petitioners maintain that the relevant regulation is 19 CFR. 351.525(b)(6)(iii) which states that if a subsidy is received by a holding company ''the Secretary will attribute subsidies to the consolidated sales of the holding company and its subsidiaries.'' Additionally, the petitioners maintain that Usinor and GTS do not cross-own each other. Instead, Usinor has one-way partial ownership of GTS.

Finally, even if the cross-ownership regulation does apply, the Department should still treat GTS as part of the Usinor group, in the petitioners' view. The petitioners point to *Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil,* 64 FR 53332 (July 26, 1999) (*Brazil Carbon Plate*) in which the Department found cross-ownership between two companies when one company owned only 49.8 percent of the other.

Moreover, the petitioners argue that Usinor effectively controls GTS because: (1) Usinor's 48.31 percent ownership interest in GTS far exceeds any other owner, (2) the next largest shareholder, Saarstahl with 32.14 percent indirect ownership interest in GTS, is in bankruptcy and its shares can only be voted on by the bankruptcy trustees, and (3) Usinor, with three of the eight GTS Board members, controls GTS' Board of Directors. Additionally, the petitioners point out that the Department learned at verification that Dillinger controls GTS. The petitioners argue that this control by Dillinger is not inconsistent with Usinor's control of GTS since Usinor is the largest shareholder of Dillinger's parent company, DHS. Furthermore, the petitioners argue that the Chairman of both DHS and Dillinger Supervisory Boards is a representative of Usinor and that Usinor's presence on DHS's and Dillinger's Supervisory Board gives Usinor considerable power.

The respondents disagree with the petitioners that the Department should treat GTS as if it were still part of the Usinor group. The respondents maintain that under section 351.525(b)(6)(iii) of the *CVD Regulations* (relating to holding companies), Usinor's subsidies should not be attributed to GTS because it is not included in Usinor's consolidated holdings. Instead, the Department properly looked to section 351.525(b)(6)(ii) of the *CVD Regulations,* (relating to cross-ownership) to determine whether any subsidies should be attributed to GTS as a result of cross-ownership between GTS and Usinor. The respondents argue that the Department correctly concluded that there is no cross-ownership between GTS and Usinor since Usinor cannot control or direct GTS' assets in essentially the same manner it could its own.

The respondents argue that the record is clear that Usinor does not have any direct interest in GTS or Dillinger (GTS' parent company), and only a minority interest in DHS (Dillinger's parent company). The respondents argue that verification confirmed that Usinor cannot use or direct the assets of DHS given its minority shareholding, the power accorded to labor on DHS' Supervisory Boards, and that all the seats on DHS' Management Board are held by employees. The respondents explain that Usinor's role in GTS is further attenuated and that Dillinger directs the individual assets of GTS. Therefore, the respondents maintain that cross-ownership does not exist, and the Department cannot attribute Usinor's subsidies to GTS.

Dillinger rejects petitioners' argument that the Department should continue to treat GTS as part of the Usinor group based on the fact that GTS was part of the Usinor group during the *French Certain Steel* investigation. Dillinger points out that in the POI of the instant proceeding, GTS is no longer consolidated in the Usinor group's financial statements. Additionally, Dillinger points out that the Department has promulgated new regulations which mandate that the Department treat GTS as a separate company.

Dillinger also rejects petitioners' argument that internal transfers and shared marketing services within the Usinor group provide a vehicle for the transmittal of subsidies. Dillinger states that GTS is no longer a consolidated member of the Usinor group so this argument is not relevant. Furthermore, Dillinger argues that petitioners' argument was not accepted by the Department in *French Certain Steel* nor has it been adopted in subsequent cases. Dillinger also rejects the petitioners' argument that the Department does not have audited financial statements for GTS for all of the years that the Department would require in order to conduct an analysis leading to a separate subsidy rate. Dillinger argues that this is not true and that the petitioners have not identified a single piece of missing information that the Department would need to calculate a separate rate.

Dillinger argues that the Department should continue to calculate a separate rate for GTS since the Department's new regulations at 19 CFR 351.525(b)(6)(iv) require a finding of cross-ownership in order to attribute subsidies. Dillinger maintains that there is no cross-ownership between the two companies because: (1) Usinor only has a minority ownership interest in DHS, (2) Usinor does not have ''golden share'' in DHS, and (3) Usinor's indirect ownership interest is matched by the combined ownership of Saarstahl and the Government of Saarland. Furthermore, Dillinger argues that Usinor's large minority ownership interest in DHS is irrelevant because the DHS General Assembly requires at least a 70 percent majority for approval. Therefore, Dillinger points out that Usinor's ownership interest does not come close to the level that would enable it control DHS, Dillinger, or GTS.

Lastly, Dillinger argues that petitioners' argument that Usinor has a dominant presence on the GTS Board of Directors is irrelevant. Dillinger points out that all shareholder representatives on GTS' Board of Directors are elected by Dillinger. Dillinger points out that the fact that three of the eight directors elected by Dillinger happen to be representatives of Usinor is merely a business decision made by Dillinger based on its prior affiliation with that company.

Department Position: Although the petitioners have raised several valid concerns about treating GTS as separate from Usinor, we have examined this matter closely and concluded that, on balance, the facts of this case support calculating separate subsidy rates for Usinor and GTS.

At the outset, we note that we do not share the petitioners' view that Section

351.525 (b)(6)(iii) (regarding holding companies) is the relevant provision for deciding how to attribute subsidies in this case. Although Usinor was a holding/parent company during the POI, GTS was no longer a consolidated member of the Usinor group and GTS' sales were not reported in Usinor's consolidated sales. Thus, subparagraph (b)(6)(iii) does not lead us to attribute Usinor's subsidies to GTS. Instead, we believe that the applicable regulation is Section 351.525(b)(6)(ii), which addresses situations involving cross ownership.

In applying this subparagraph, the petitioners have asked that we take into account two types of concerns. First, because Usinor is a vertically integrated company and because certain services are shared among Usinor companies, including GTS, they should be viewed as a single company. Second, although Usinor is not the majority owner of GTS, it should be viewed as controlling GTS. We address these points in turn.

The petitioners are correct that both GTS and Usinor, as producers of subject merchandise, share service centers, marketing arms, and channels of distribution. GTS makes a certain number of its French sales through a subsidiary of Sollac and some of its U.S. sales to an importer which is also owned by Sollac. However, we reviewed these transactions carefully at verification and found no indication that they were not at arm's length. Therefore, we found no basis to conclude that subsidies were transmitted from Usinor to GTS (or vice versa) as a result of GTS using Usinor affiliates for these services.

To the extent that the petitioners rely on the Department's decision ''to collapse'' respondents in the *Affirmative Countervailing Duty Determination and Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy and Turkey,* 61 FR 30288, 30308 (June 14, 1996) (*Italy Pasta*) as the basis for treating Usinor and GTS as a single company, we note that *Italy Pasta* predates the current regulations. We also are not persuaded by the precedents involving the Usinor group. Until 1996, GTS' results were consolidated in the Usinor Group. Therefore, even under our current regulations, Usinor's subsidies would be attributed to GTS and a single CVD rate would be calculated. With respect to *French Stainless,* which had a 1997 POI, GTS' sales were not included in Usinor's sales because GTS was no longer included in Usinor's consolidated results.

Regarding Usinor's alleged control of GTS, as noted above, Usinor indirectly owned 48.75 percent of GTS during the POI. Because this level of ownership is close to the majority ownership required to find cross ownership, we have examined closely whether Usinor controls GTS directly, or indirectly through its ownership position in DHS. In analyzing whether two companies should be treated as one for purposes of calculating a countervailing duty rate, we believe that the control analysis undertaken in connection with subparagraph (b)(6)(ii) should identify situations where the ''interests of these two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the corporations in essentially the same ways it can use its own assets (or subsidy benefits).'' See the Preamble to the *CVD Regulations* (63 FR at 65401).

In this connection, the petitioners have pointed to *Brazil Carbon Plate,* where the Department found cross ownership although the major shareholder held less than a majority ownership position. We note that the facts in this case differ from those in the Brazil case. In *Brazil Carbon Plate,* one shareholder directly held 49.8 percent while the remaining shareholders were numerous (*i.e.,* more than 10) and each held a small ownership interest percentage with no one shareholder coming close to controlling one-quarter of the shares that the main shareholder controlled (64 FR at 53334). In the instant proceeding, Usinor's ownership interest is indirect (via DHS) and there are only three other shareholders in DHS, two of which are affiliated and together match Usinor's ownership interest. Specifically, while Usinor's ownership interest in DHS is unquestionably large, it is matched by two affiliated shareholders, SAG Saarstahl AG at 33.75 percent and Government of Saarland at 15 percent.

We have also considered whether Usinor controls GTS via control over its Board of Directors and its parent companies, Dillinger and DHS. First, we do not believe that Usinor controls GTS Board of Directors, notwithstanding the fact that Usinor has three of the eight representatives on GTS' current Board. According to the information we received, Usinor cannot control the GTS Board because all Board members are selected by Dillinger, and there is no indication that Usinor has guaranteed ownership of these three seats. Dillinger has stated that its decision to have Usinor representatives on GTS' Board was a business decision based on their knowledge of the industry.

Second, we find that Usinor does not control Dillinger, notwithstanding the fact that Usinor is the largest shareholder of Dillinger's parent company, DHS. We recognize, in certain situations and in certain countries, that a large minority interest such as Usinor's interest in DHS could lead a finding of control by that shareholder. However, because DHS and Dillinger are German companies in the coal, iron and steel sector, they are governed by laws which limit the shareholders' ability to control a company. In the case of DHS and Dillinger, information on the record shows that the day-to-day operational decisions and long-term business decisions concerning DHS and Dillinger are made by DHS's and Dillinger's Supervisory and Management Boards, and Usinor did not and could not control these decision-making bodies given its ownership interest during the POI.[2]

During the POI, Dillinger's Supervisory Board consisted of 15 members, three of which were Usinor company representatives. Given that Supervisory Board decisions require a 50 percent majority and Usinor had only three representatives on this Board, it was impossible for Usinor to control Dillinger's Supervisory Board. Additionally, the Department notes that laws governing the membership of Dillinger's Supervisory Board require an equal number of labor and shareholders' representatives. Given this legal requirement, Usinor's minority indirect ownership interest could not enable it to gain a significant presence on the Supervisory Board to control decision making. With respect to Dillinger's Management Board, we note that it consists of employees from DHS and Dillinger. Therefore, Usinor does not control the Dillinger's Management Board.

Similarly with respect to DHS, resolutions requiring approval of DHS' General Assembly of Shareholders (which includes the election of the Supervisory Board members) require 70 and 90 percent majorities. DHS' Supervisory Board requires a 50 percent majority for the approval of decisions, and Usinor holds only three out of 21 seats on this Board. Like Dillinger's Management Board, DHS' Management Board is made up of employees.

Based on all the information regarding Usinor and its ability to direct or control GTS, we have concluded, on balance, that such control does not exist. Therefore, we have determined that

[2] Because more specific information concerning the types of decisions made by both Dillinger and DHS's Supervisory and Management Boards is business proprietary, the Department cannot discuss them here.

cross ownership does not exist between Usinor and GTS.

Comment 2: 1996 Transfer of Usinor's Ownership Interest in DHS Should Not Be Treated as a Spin-Off of GTS

The respondents argue that the Department erroneously applied its change-in-ownership methodology to the 1996 partial reduction of Usinor's ownership interest in DHS. The respondents maintain that this transaction was not a sale or transfer of GTS because no GTS shares changed hands and, therefore, it should not be treated as a spin-off of GTS. The respondents explain that the fact that the transaction had the effect of reducing Usinor's indirect beneficial interest in GTS was an incidental result of the transaction, not the focus.

The respondents point out that the Department has made clear that it will not apply its change-in-ownership methodology to every transaction that affects the ownership of a productive unit. The respondents state that in *Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Italy,* 64 FR 15508, (March 31, 1999) (*Italian Plate*), the Department declined to perform its change-in-ownership methodology to a transaction involving the sale/transfer of indirect beneficial interests of the Italian respondent, AST, because the ownership interest was relatively small and so remote from the company upon which the subsidies were conferred. The respondents argue that Usinor's 1996 transaction is similar to the Italian one in that in both cases, the productive units (GTS and AST) were not involved in the transaction and the exchange occurred two levels up the corporate chain from the productive unit.

Additionally, the respondents argue that the Department's practice and regulations preclude attributing subsidies to GTS as a consequence of the 1996 transaction because the transfer of shares involved DHS, a German company upon which no alleged subsidies involved in this investigation were conferred. The respondents argue that the Department's regulations at 19 CFR 351.525(b)(7) do not permit the attribution of subsidies across borders. Therefore, they maintain it is impossible for Usinor's subsidies to be attributed to GTS through Usinor's transfer of shares in DHS, a German company.

The petitioners take issue with the respondents' claim that German ownership of GTS' stock somehow relieves GTS' production of countervailable French subsidies. The petitioners argue that the subsidies in question were provided to French steel production which included GTS. The petitioners argue that the real issue is whether Usinor's reduction of its ownership interest in DHS in 1996 leads to reallocation of the subsidies received by GTS. The petitioners believe that there should be no reallocation of subsidies as a result of this transaction since the respondents have contended that nothing substantive really happened as a result of this transaction.

The petitioners object to the respondents' application of the transnational rule because the petitioners believe that it is not applicable here as it only deals with initial bestowal of subsidies not attribution. The petitioners point out that even if the transnational rule applies, it does not apply to subsidies tied to French production which are the only subsidies at issue in this case. Finally, the petitioners note that if the respondents' application of the transnational rule is correct, then companies could insulate their subsidiaries from all countervailing duty liability by setting up their ownership in foreign holding companies.

Department Position: We disagree with the respondents that we erroneously applied our change-in-ownership methodology to the 1996 reduction of Usinor's indirect interest in GTS. For this final determination, the Department has revised its treatment of the subsidies received by GTS when it was part of the Usinor Group by assigning to GTS its pro rata share of Usinor's subsidies (based on GTS' sales/assets as a percentage of Usinor's sales/assets). Since those subsidies have been attributed to GTS and a portion of GTS has been sold, it is appropriate to apply our change-in-ownership methodology to the 1996 transaction in the instant proceeding.

We believe that the situation can be distinguished from that in *Italian Plate.* First, the net result of this transaction resulted in the termination of GTS' consolidation in Usinor's financial results. Second, the seller (Usinor) was owned, in part, by the Government of France. Therefore, Usinor's sale of its DHS shares resulted in the disposition of a portion of GTS to private parties. This is in contrast to *Italian Plate* where minority private owners were selling their interests in AST's parent companies to other private companies.

We further disagree with the respondents that the Department's regulations preclude the attribution of subsidies to GTS as a consequence of the 1996 transaction because Usinor's sale of its DHS shares was to a foreign company. While the Department's regulations require it to attribute subsidies to products produced within the territory of the subsidizing government, GTS is located in France (*see* 19 CFR 351.525(b)(7)). Therefore, even if those subsidies flowed from Usinor to the German company which purchased Usinor's DHS shares, our attribution rules require that the subsidies be attributed to DHS' French production, *i.e.,* GTS.

Comment 3: The Department Must Correct the Misapplication of its Change-in-Ownership Methodology to the 1996 Transaction

The respondents suggest that if the Department were to continue to treat the 1996 DHS transaction as a spin-off of GTS, then it must correct the misapplication of its change-in-ownership methodology in the *Preliminary Determination*. The respondents argue that in the *Preliminary Determination* the Department treated the transaction as involving 100 percent of GTS' assets rather than a partial spin-off of a small portion of Usinor's indirect beneficial interest in GTS, as stipulated in the GIA (58 FR at 37273). In the GIA, the respondents point out that the Department stated that pass-through of subsidies must correspond to the extent of the interest being transferred. The respondents do not agree with the Department's analysis that Usinor's reduction of its interest in DHS was ''akin to a total sale since Usinor no longer had the ability to control or direct GTS' assets as its own'' (see Memorandum from the Team to Susan Kuhbach regarding the Ministerial Error Allegation for Preliminary Determination (September 22, 1999)). The respondents believe that the methodological rationale advanced in the *Preliminary Determination* is not consistent with the Department's decision not to require change in control before applying its change-in-ownership methodology.

The respondents argue that it is impossible for the Department to treat the 1996 DHS transaction as a 100 percent transfer of GTS when the Department treated the 1992 sale of Sollac's ownership interest in GTS as a partial spin-off. Additionally, the respondents argue that methodology applied to the 1996 transaction in the *Preliminary Determination* is inconsistent with the Department's repayment methodology since the calculation provided for 100 percent of GTS' assets as transferred but repayment could have been only been based on the price paid for the assets actually transferred which was 21.25 percent of DHS' shares. Therefore, the respondents argue that if the Department continues to treat the 1996 transaction as a spin-off involving GTS, it should revise the assets to reflect the percentage that was actually transferred.

The petitioners take issue with the respondents' suggestion that because only 21 percent of DHS was transferred, a maximum of 21 percent of the subsidies provided to GTS' production can be countervailed. The petitioners point out that the respondents' argument is based on the incorrect assumption that no subsidies are attributable to GTS' production prior to the 1996 transaction. The petitioners contend that the real question is to what extent, if any, is the 21 percent of the subsidies repaid or reallocated. The petitioners further argue that the 1996 transaction does not change the fact that 79 percent of the previously allocated subsidies inhere in GTS' assets and, therefore, are attributable to GTS.

The petitioners do not believe that the methodology used in the *Preliminary Determination* to attribute subsidies to GTS as a result of the 1996 transfer is inconsistent with its past practice. The petitioners argue that once the Department decided that the result of the 1996 transaction required it to calculate a separate rate for GTS, it first correctly determined the total amount of the subsidies potentially allocable to GTS' production.

The petitioners point out that the second step of the change-in-ownership calculation requires it to determine the amount of subsidies repaid or reallocated by the partial sale. The petitioners believe that the Department correctly applied its methodology by determining that this transaction could have only resulted in the repayment/reallocation of a maximum of 21 percent of the subsidies since only 21 percent of the assets were transferred. The petitioners reject the respondents' claim that there is inconsistency or unfairness in the Department's application of its change-in-ownership methodology in this transaction.

Department Position: We have revised the calculation used in the *Preliminary Determination.* Beginning with the 1992 transaction and continuing with the 1996 transaction, we have determined the subsidies allocable to GTS (in accordance with the spin-off methodology described in the GIA). Then, as ownership of GTS transferred out of Usinor, we applied our change-in-ownership methodology to measure the amount of subsidies that were reallocated to Usinor. This approach was necessitated by our decision that GTS should be treated as separate from Usinor during the POI. In short, because GTS' sales were no longer included in the Usinor Group's sales, it was incorrect to include subsidies attributable to GTS (because it was part of the Usinor Group when these subsidies were received) as Usinor's subsidies.

We disagree that this revision from the *Preliminary Determination* conflicts with the position taken by the Department in *Italian Plate* regarding changes in control. Specifically, there does not have to be a change in control of a company for the Department to apply the change-in-ownership methodology. However, when a company moves from being part of a consolidated group to outside the consolidated group because of a change in ownership, it is appropriate to ensure that the proper share of subsidies is assigned to the company.

Comment 4: Privatization Should Extinguish Any Previously Bestowed Subsidies

The respondents argue that the circumstances of Usinor's privatization compel the Department to find that any previously conferred subsidies were eliminated and did not pass through to the privatized company. The respondents point out that the URAA directs the Department to examine all the circumstances of a privatization to determine whether and to what extent subsidies have been extinguished or passed through to the private buyer. Similarly, the SAA at 928 directs the Department to devise an appropriate methodology to determine whether and to what extent, the privatization of a government-owned firm eliminates any previously conferred countervailable subsidies. The respondents argue that the countervailing duty law states that a subsidy can only be found where a benefit is conferred as the result of a government financial contribution. The respondents maintain that the payment of a market price for all or part of a previously subsidized entity should extinguish previously bestowed countervailable subsidies because the purchased entity is acquired at full value and, thus, there is no benefit. See 19 CFR 351.503(b)(1). Since Usinor's privatization consisted mainly of the sale of shares to the public for fair market value by means of international and French public offerings, the full value of any previously conferred subsidies was embodied in the purchase price and those subsidies were eliminated upon Usinor's privatization.

Additionally, the respondents note that a WTO Dispute Settlement Panel recently found in a case involving hot-rolled lead and bismuth carbon steel products from the United Kingdom that the Department had violated its WTO obligations in determining that the sale of a company to private bidders did not automatically extinguish subsidies that the company received when it was government owned.

The petitioners dispute the respondents' claim that Usinor's privatization eliminates benefits from pre-privatization subsidies. According to the petitioners, this same argument has been repeatedly rejected by the Department, the CIT, and Congress. Specifically, the respondents argument that there is no benefit after Usinor's privatization because the shares were purchased at fair market value is misplaced since the Department's obligation with respect to a benefit analysis refers to the initial bestowal of the subsides not to a competitive benefit received after privatization.

The petitioners further believe that the respondents have wrongly accused the Department of failing to examine all factual circumstances as directed by the statute. The petitioners argue that the requirement to ''examine all circumstances'' relates to determining whether any repayment of subsidies has taken place, not, as respondents characterize, whether a competitive advantage has been received. Petitioners claim that the respondents' argument would be tantamount to a presumption that subsidies do not survive privatization, a presumption which the petitioners argue the URAA's change-in-ownership provision was enacted to preclude.

The petitioners argue that the record in the instant proceeding fully supports the Department's decision to countervail Usinor's sales post-privatization. In support of this, the petitioners point out that Usinor is wholly unchanged by the privatization as the privatization was merely a stock sale and Usinor has made clear that its management did not change in any way after the privatization.

Lastly, with respect to the WTO report, the petitioners point out that this interim report cannot change the clear Congressional mandate which expressly overturns Usinor's argument with respect to this issue.

Department Position: Under our existing methodology we presume neither automatic extinguishment nor automatic pass-through of prior subsidies in an arm's-length transaction. Instead, our methodology recognizes that a change in ownership has some impact on the allocation of previously bestowed subsidies and, through an analysis based on the facts of each transaction, determines the extent to which the subsidies pass through to the privatized company. In the instant proceeding, we have relied upon the pertinent facts of the case in determining whether the countervailable benefits received by Usinor Sacilor pass through to the privatized Usinor and to the productive units that have been spun off by Usinor.

Following the GIA methodology, the Department subjected the level of previously bestowed subsidies and Usinor's purchase price to a specific, detailed analysis. This analysis resulted in a particular ''pass-through ratio'' and a determination as to the extent of repayment of prior subsidies. On this basis, the Department determined that when Usinor was privatized a portion of the benefits received by Usinor Sacilor passed through to Usinor and a portion was repaid to the government. This is consistent with our past practice and has been upheld in *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) (*British Steel*), and *Delverde, SrL.* v. *United States,* 24 F. Supp. 2d 314 (CIT 1998).

Furthermore, Usinor's contention that the sale of Usinor was an arms-length, market-valued transaction 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 arms-length transaction. Section 771(5)(F) of the Act instead leaves the choice of methodology to the Department's discretion. Additionally, 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. *See* SAA at 928.

Lastly, with respect to the respondents' and the petitioners' comments concerning the recent finding by a WTO Dispute Settlement Panel that an arm's-length privatization automatically extinguishes prior subsidies received by government-owned firms, the Department notes that this was an interim (*i.e.,* preliminary) confidential report. As such, it is inappropriate for the parties or the Department to comment on it.

Comment 5: Repayment Portion of Change-in-Ownership Analysis

According to the petitioners, Congress intended that countervailing duties be imposed to offset subsidies to production. Since changes in ownership do not affect production, the petitioners conclude that they should also not affect countervailing duty liability.

The petitioners distinguish between the subsidies themselves and countervailing duty liabilities arising from those subsidies. Citing the GIA (58 FR at 37260) where it quotes *British Steel Corp.* v. *United States,* 605 F. Supp. 286, 294 (CIT 1985), the petitioners state that the Department is obligated, when injury exists, to impose duties when subsidies have been provided ''with respect to the manufacture, production or export . . . of a class or kind of merchandise'' imported into the United States. To show that the liability for such subsidies is attached to production, the petitioners cite to the same where it states, ''if a benefit or advantage is received in connection with the production of merchandise,'' that benefit or advantage is a ''bounty or grant on production.'' To further demonstrate the linking of countervailing duty liabilities to production in a post-URAA case, the petitioners cite the Final Results of Redetermination Pursuant to Court Remand, *Delverde, SrL* v. *United States,* Consol. Ct. No. 96–08–01997, *aff'd, Delverde, SrL* v. *United States,* 24 F. Supp.2d 314 (CIT 1998) where it states:

> Once the Department determines that a ''subsidy'' has been provided, it measures the amount of the subsidy, attributes the subsidy to the appropriate production . . . Generally speaking, the practical results of this system is to link liability for, as an example, pasta subsidies to pasta production.''

The petitioners maintain that after a change in ownership, a company will produce at the same cost, in the same volume and with the same artificial advantages born of subsidies. This happens, state the petitioners, because the profit-maximizing level of price and output are unchanged. According to the petitioners, regardless of whether a buyer or seller captures the benefit of a subsidy after a change in ownership, the buyer still acquires the subsidy-augmented production facilities and uses them at the same profit-maximizing level, thus leaving the misallocation of resources arising from the subsidies and the threat to the companies' competitors unchanged.

To show that the seller actually captures the benefit of previously bestowed subsidies, the petitioners cite a publication by the U.S. Department of Agriculture which states that subsidies to farmers have created inequities between existing and entering farmers by increasing the cost of acquiring land for entering farmers.[3] The petitioners maintain that even though sellers gain the windfalls from subsidies during a change in ownership, the reallocation of countervailing duty liabilities back to the sellers is inappropriate. First of all, the price paid by a buyer is discounted for the risk associated with the countervailing duty liabilities, according to the petitioners. In addition, since the seller no longer has control over production, the petitioners state that imposing duties on the seller would not have the effect of offsetting the artificial advantages on production arising from the subsidies.

The petitioners further argue that the reallocation/repayment aspects of the Department's change-in-ownership methodology amount to measuring the effects of subsidies and taking account of events subsequent to the bestowal of the same. According to 19 CFR 351.504–511, the Department should not take into account the effects of subsidies and, instead, should measure benefits at the time of bestowal.

Finally, the petitioners take issue with the Department's practice of automatically conducting a repayment/reallocation analysis as part of its change-in-ownership methodology. According to the petitioners, the URAA legislative history makes it clear that such automaticity was not intended by Congress where it says that the Department must continue to countervail subsidies following a normal (*i.e.,* fairly priced) ownership change without lessening or reallocating unamortized subsidy benefits unless something else occurs during the transaction that ''actually serve[s] to eliminate . . . subsidies.'' See S. Rep. No. 103–412 at 92 (1994).

The respondents emphasize that the petitioners' argument that there must be specific evidence of repayment has been considered and rejected by the Department in the GIA (58 FR at 37264). In addition, the respondents state that there is nothing about the Ugine transactions or Usinor's 1995 privatization that would disqualify these transactions from being analyzed under the Department's change-in-ownership methodology.

Department Position: The petitioners' main argument is that subsidy liabilities are attached to production; therefore, subsidy amounts cannot change when production remains unchanged. While we agree that subsidies benefit production, that does not require the

[3] U.S. Farm Programs and Agricultural Resources, USDA Economic Research Service, Agricultural Information Bulletin No. 614 (Sept. 1990).

conclusion that subsidies cannot change without changes in production. Our rationale for applying repayment calculations as part of our change-in-ownership methodology does not presuppose that production has changed. Rather, our methodology is based on the idea that a portion of the purchase price for ownership rights may remunerate the seller for prior subsidies.

To the extent we countervail the portion of the subsidy existing after repayment or reallocation, we are executing our mandate ''to impose duties with respect to the manufacture, production or export of a class or kind of merchandise.'' Our repayment/reallocation methodology, as part of our change-in-ownership methodology, has been litigated and upheld by the Courts (*see Saarstahl AG* v. *United States,* 78 F.3d 1539 (Fed. Cir. 1996), *British Steel plc* v. *United States,* 127 F.3d 1471 (Fed. Cir. Oct. 24, 1997) *British Steel plc* v. *United States,* 929 F. Supp. 426 439 (CIT 1996) and *Delverde, SrL.* v. *United States,* 24 F. Supp. 2d 314 (CIT 1998).

We disagree with the petitioners' assertion that the ''automatic'' nature of the repayment/reallocation analysis is contrary to the URAA legislative history. The legislative history simply says that a change in ownership ''does not by itself require the Commerce Department to determine that a countervailable subsidy . . . continues to be countervailable, even if the change in ownership occurs through an 'arm's length transaction' '' and that ''the sale of a firm at 'arm's length' does not automatically extinguish any previously-conferred (sic) subsidies.'' See S. Rep No. 103–412 at 92 (1994). To the extent our repayment/reallocation methodology does not make any presumptions as to whether there will be any repayment/reallocation as a result of a change in ownership, there is nothing inherently automatic in its nature. Nowhere does the legislative history require that ''something else'' must happen, as was argued by the petitioners, before subsidies can be extinguished.

Finally, regarding the petitioners' argument that the repayment/reallocation calculation amounts to measuring to the effects of subsidies, we disagree. Our methodology does not examine the effects of a subsidy.

Comment 6: Spin-Offs of Productive Assets

The petitioners maintain that in the event the Department decides to continue applying the repayment portion of its change-in-ownership analysis, it should only conduct such analyses for sales of enterprises that Usinor has demonstrated to be productive units. In particular, the petitioners question whether Usinor has demonstrated that the enterprises sold to FOS-OXY and Enterprise Jean Lefebvre in 1994 were, at the time of sale, ''productive'' within the meaning articulated in the GIA, *i.e.*, capable of generating sales and operating independently. See GIA 58 FR at 37268.

In *French Stainless,* state the respondents, the Department found that Entreprise Jean LeFebvre was a lime production facility and FOS-OXY an oxygen-generating one. According to the respondents, the production of oxygen and lime both constitute production; therefore, the treatment of these two companies as ''productive units'' in the *Preliminary Determination* was proper. In any event, the respondents point out that the issue is moot in that no subsidies were spun-off from Usinor as a result of either of these two transactions because all benefits were found to be reallocated to Usinor.

Department Position: As stated above in Comment 5, we are continuing to apply our repayment analysis. However, the application of this analysis in this case results in all subsidies potentially spun-off to Entreprise Jean LeFebvre and FOS-OXY remaining with Usinor. Therefore, the respondents are correct that the issue is moot.

Comment 7: Assets v. Sales in Apportioning Subsidies

The petitioners point out that the Department's practice of using relative asset value to apportion subsidies between units in a spin-off analysis was born from administrative convenience in the *Certain Steel* investigations to cover situations where a unit does not have identifiable sales. See GIA 58 FR at 37268. Prior to *Certain Steel,* the petitioners note that the Department acknowledged the reasonableness of apportioning subsidies via relative sales by stating:

> [B]ecause it is the Department's long-standing practice to allocate subsidies over the sales of subject merchandise, it is reasonable to use the ratio between the sales of [the spun-off unit] and the sales of the [parent] . . . as the basis on which we would apportion the subsidies.

See *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom,* 58 FR 6237 (July 9, 1993) (UK Bismuth). In situations where sales are disproportionate compared to assets, the use of assets to apportion subsidies can be distortive in light of the statute's goal of offsetting subsidized U.S. sales, state the petitioners. Accordingly, the petitioners argue that subsidies should be apportioned based on relative sales in situations where both the parent and the spun-off unit have sales.

Acknowledging that the Department expressed a preference for asset values over sales values in *UK Bismuth,* the respondents argue that the Department later expressed its clear intention in the GIA to adopt a practice of using assets where it stated, ''asset values are the more appropriate basis upon which to measure the portion of the subsidy which potentially passes through'' (58 FR at 37268). According to the respondents, adopting an approach that could be applied consistently was a reasonable step by the Department as opposed to using different measures from one case to another depending upon the information available. In addition, the respondents state that the Department has consistently used asset values in other proceedings, *see, e.g., French Stainless* 64 FR at 30776–77.

Department Position: We agree with the respondents that it is the Department's practice and preference to apportion subsidies based on assets. In many instances, such as in spin-offs of units that were not previously considered to be profit centers, sales values may not be available. In using assets to apportion subsidies, we have a measure that can be applied in all cases which adds to predictability. Moreover, it avoids the situation where the spin off of one productive unit in a company which happens to have a sales value would be treated differently than the spin off of another productive unit in the same company which does not have a sales value. However, we recognize that there may be situations where an exception to this rule is necessary. As stated in our response to Comment 8 below, information on the record does not allow us to calculate a French-only asset value for Usinor for any of the years in which spin offs occurred. For details on how we are addressing this situation for purposes of this final determination, see Comment 8:

Comment 8: French v. Total Usinor Assets

Should the Department continue to use assets as the basis for allocating subsidies between GTS and the Usinor Group, argue the petitioners, then it should base the calculation of Usinor's assets only on the relevant pool of assets over which the subsidy benefits would be applicable, *i.e.,* French assets in this case. The petitioners note that this information was requested at verification but not provided. Lacking information on Usinor's French assets, the petitioners suggest that the Department use sales to allocate the subsidies between Usinor and GTS, in particular, Usinor's sales of French-produced merchandise net of intra-company transactions.

The respondents argue that the use of total assets has been the Department's practice since the Certain Steel cases where it said in the GIA that the potential pass-through of subsidies would be calculated by comparing the book value of ''the productive unit sold to the book value of the assets of the entire company'' (58 FR at 37273). The respondents add that this same methodology of allocating subsidies based total assets was used in the *French Stainless* case.

Department Position: This is the first time that the question of what group of assets to use in allocating subsidies between units under our change-in-ownership methodology has arisen as an issue of contention. While our prior general statements on the use of assets may have referred to ''total assets,'' this is because our basic assumption was that for a typical respondent, subsidy benefits would apply equally to all assets. However, we acknowledge that the asset values used for purposes of apportioning benefits between units as part of our change-in-ownership methodology should correspond to those assets to which subsidies would properly be attributed (*i.e.*, assets in facilities located in France). Such an approach is entirely consistent with our view that governments subsidize domestic production and not foreign production, which has been upheld by the Courts. See Preamble to the *CVD Regulations (*63 FR at 65403); see also Inland Steel Industries v. United States, 188 F. 3d 1349, 1360–61 (Fed. Cir. 1999) (where the Court held that the Department's presumption that subsidies are tied to domestic production on the premise that a foreign government normally intends to principally benefit its domestic production ''is eminently reasonable'').

Information on the record of this case, however, does not allow us to calculate a French-only asset value for Usinor for any of the years in which spin-offs occurred. This information was requested of Usinor too late in the proceeding for it to provide. Therefore, for those transactions for which French sales values are available for both Usinor and the units being spun off, we are using sales to allocate subsidies in this case. For those transactions for which French sales values are not available, we will continue to use total assets to allocate subsidies for purposes of this final determination. Should a countervailing duty order be put in place in this case, we will, however, pursue French asset values during the course of any administrative review that may occur.

Comment 9: Sale of and Buyback of Ugine Shares

Should the Department continue to calculate repayment as part of its change-in-ownership analysis, the petitioners take issue with its application to the partial spin-off of Ugine shares that were eventually repurchased by Usinor a short time later. If the Department allows for the reduction in subsidy benefits in this case via repayment, the petitioners argue that an incentive would be created for foreign producers to buy and repurchase their productive units in order to dissipate their countervailable subsidy benefits. The petitioners note that while the amount of repayment with respect to the Ugine transactions was small, the concept is important in principle.

The respondents counter by saying that both the initial sale of Ugine shares and their later repurchase by Usinor were legitimate, arm's-length transactions. According to the respondents, these were not sham or churning transactions, as supposed by the petitioners. Since these were legitimate transactions, the respondents maintain that application of the Department's change-in-ownership methodology is warranted.

Department Position: We agree with the respondents that there is nothing on the record of this case indicating that there is anything illegitimate about these transactions. However, because Ugine would continue to be consolidated in the Usinor Group, and we did not apply our change-in-ownership methodology to the repurchase of Ugine's shares by Usinor, application of the change-in-ownership methodology would not affect subsidies to the Usinor Group. This is because in any reallocation of subsidies from the sale of Ugine's shares, the reallocated portion would go to Usinor. However, Usinor's subsidy benefits, including the amount reallocated would be attributed to all members of the consolidated Usinor Group, including Ugine. Likewise, any amount allocable to Ugine would have been attributed to the Usinor Group.

Comment 10: The 1995 Privatization of Usinor

Should the Department continue to apply its repayment methodology to privatizations, the petitioners argue that no repayment should be found in the 1995 privatization of Usinor. According to the petitioners, the ''repayment'' of subsidy benefits to the government was not possible in this case since the purchase price for Usinor was retained by Usinor, itself, and not passed on to the GOF.

According to the respondents, the 1995 privatization of Usinor involved the sale of shares for cash and no part of the purchase price inured to Usinor. The respondents add that Usinor's capital increase, to which the petitioners allude, was properly not included among the programs to be examined during this investigation because the purchase of shares by private investors did not provide countervailable benefits to Usinor.

Department Position: We agree with the respondents that the 1995 privatization of Usinor was a legitimate transaction for which a change-in-ownership calculation is appropriate. All monies paid for existing Usinor shares during the privatization process were received by the parties holding those shares prior to the transaction, *i.e.*, proceeds from the sale of shares held by the GOF were paid to the GOF, those from shares held by Clindus (the subsidiary of Credit Lyonnais holding Usinor shares) were paid to it. The only monies received by Usinor during the privatization process were those it received for the sale of new shares in a public offering. The sale by Usinor of new shares was like any other private company offering shares as a means of raising capital. In such cases, it is proper for the seller (*i.e.*, the company itself) to hold on to the proceeds of the sale.

Comment 11: Disposition of Benefits Spun-Off in 1992 GTS Transaction

Since the 1992 transaction was a share swap that did not push GTS outside of the Usinor Group, state the petitioners, this transaction should not be viewed as a spin off. Should the Department continue to apply a spin-off calculation to this transaction, the petitioners state that the distinct benefit stream for the spun-off portion of GTS should be properly applied as was not done in the calculations for the *Preliminary Determination.*

While the 1992 transaction did not result in the loss of control of GTS by Usinor, the respondents argue that it was, nonetheless, a partial spin-off to third parties. As such, the respondents conclude that the Department's treatment of this transaction in the *Preliminary Determination* as a partial spin-off was in accord with its practice with respect to partial changes in ownership.

Department Position: As discussed in the ''Change in Ownership'' section of the notice, we have applied our change-in-ownership methodology to the 1992 transaction. It is necessary to do this because a portion of GTS moved from Usinor to non-Usinor ownership and Usinor received payment for that portion of subsidies attributable to GTS. Although GTS is not treated as a separate company until 1996, we need to account for the 1992 transaction so that the amount of subsidies potentially reallocated to Usinor 1996 is commensurate with the amount of ownership that has transferred up to time.

Comment 12: Calculation of the Portion of Benefits Spun-Off in 1992 GTS Transaction

Should the Department continue to do a partial spin-off calculation with respect to the 1992 GTS transaction, the petitioners argue that it must correct its calculation of the portion of Usinor benefits potentially being spun-off by virtue of the partial sale of GTS. According to the petitioners, the Department should first determine the benefit attributable to GTS as a whole, and then multiply that amount by the percentage of GTS being sold to determine what, if any, reallocation occurs.

The respondents take issue with the petitioners' proposition that subsidies should be attributed to all of GTS' assets, including those not spun-off, with respect to the 1992 partial spin-off. According to the respondents, under the Department's change-in-ownership methodology with respect to partial changes in ownership, the subsidy benefits attributable to the portion of GTS that was not sold and remained with Usinor do not travel with the sold portion. Rather, the respondents claim that those benefits should remain with Usinor and be attributed across the consolidated French sales of Usinor.

Department Response: Given the circumstances of this case, in particular the facts that GTS goes through two partial changes in ownership prior to the POI and is being treated as a separate company, we have performed our calculations as suggested by the petitioners. That is, beginning in 1992, we have calculated subsidies attributable to GTS based on GTS' share of Usinor's assets in that year. The level of the ownership change in 1992 (and also 1996) serves to cap the amount of subsidies reallocated to Usinor as a result of the payments for GTS. Although only a portion of GTS is sold in each instance (*i.e.*, these are partial privatizations) it is necessary to move the full amount of subsidies out of Usinor and into GTS because after 1996, GTS is separate from Usinor. To follow the respondent's suggestion would understate the benefit to GTS.

Comment 13: Allocation Period

Should the Department continue to find that the 1995 privatization of Usinor did not extinguish previously bestowed benefits, the respondents argue that Usinor's company-specific calculation of its average useful life of assets (AUL) for the POI should be used to determine its allocation period. The respondents take issue with the decision in *French Stainless* where the Department for the first time rejected a verified, company-specific AUL in favor of one from another previous investigation. Following the *French Stainless* precedent is not justified in this case, argue the respondents, because the Preamble to the regulations governing this investigation (which differ from those governing *French Stainless*) require the Department to use a company's own AUL when it varies from that in the IRS tables by one year or more. See 19 CFR 351.524(d)(2)(iii).

The respondents also point out that the *French Stainless* decision is inconsistent with prior court rulings mandating the use of company-specific allocation periods based on record evidence which the Department has followed consistently until *French Stainless* (*see e.g.*, Italian Plate (64 FR at 15511); *Certain Pasta From Italy: Final Results of the Second Countervailing Duty Administrative Review,* 64 FR 44489, 44490 (August 16, 1999)). According to the respondents, there is no basis for using information that is decades old. Not only has the current data been verified as being accurate, the respondents claim that its privatization did not change Usinor's AUL nor has Usinor and it has not suffered a bankruptcy, instances that petitioners state may affect a company's AUL. As for the concern that changing the allocation period from one case to another may result in under- or over-countervailing a subsidy, the respondents state that this is simply not the case.

Finally, the respondents note that the Department has not hesitated to apply other parts of 19 CFR 351.524(d) (the section of the *CVD Regulations* specifying the AUL methodology) when they work to the detriment of the respondents, such as the use of a new policy for calculating discount rates. For example, the use of the new discount rates created entirely new benefit streams for Usinor's old subsides, state the respondents. The respondents point out that this stands in contrast to the rationale in *French Stainless* of applying an AUL from a prior case to previously countervailed subsidies in order to maintain consistency. According to the respondents, the Department cannot pick and choose which parts of the applicable regulations it will apply.

The petitioners cite to *French Stainless* as precedent for maintaining the allocation period for a particular subsidy benefit once it has been countervailed. To change the allocation period in a future segment or proceeding, argue the petitioners, would risk either over-countervailing or under-countervailing the subsidy. Such a practice, point out the petitioners, would also be at odds with the fact that the subsidies themselves have not changed.

The petitioners also point out that the 14-year period used in the *Preliminary Determination* was based on Usinor's own information and approved by the CIT during the Certain Steel litigation. See *British Steel plc.* versus *United States,* 929 F. Supp. 426 439 (CIT 1996). The petitioners note that while the regulations require a company-specific AUL, they do not mandate the period over which that AUL should be calculated. The petitioners' take issue with the information submitted by Usinor for the calculation of the allocation period noting that it covers only post-bestowal years—a period not ''appropriate'' within the meaning of section of the Preamble to the *CVD Regulations* pertaining to company-specific AULs (63 FR at 65397).

With respect to the respondents' complaint about the change in the discount rates affecting the benefit streams, the petitioners state that changing a discount rate differs from changing an allocation period in that the principal amount allocable to any particular year is not affected by a change in the discount rate, but would be when the allocation period changes.

Finally, should the Department contemplate using an allocation period other than 14 years, the petitioners maintain that, pursuant to 19 CFR 351.524(d)(2), it should look to the IRS tables as they are the default source for information on the useful life of assets when a respondent has not demonstrated a significantly different and non-aberrational average useful life of assets of its own.

Department Position: For this final determination, we are continuing to allocate subsidies countervailed in prior cases over the AUL established in those prior cases consistent with *French Stainless.* See, *e.g.*, *French Certain Steel.* In so doing, we maintain consistency across cases and predictability, and we attach the most relevant period possible to allocable subsidies.

Since the purpose of calculating an AUL is to determine the relevant period over which an allocable subsidy would provide benefits to a company, the year of most relevance is the year of receipt. In an ideal setting, we would calculate a company's AUL, in accordance with our methodology in the *CVD Regulations,* in each year that an allocable subsidy is provided and then allocate each subsidy based on the AUL of that year. This is what we do in administrative reviews when new allocable subsidies are received during a review period. See, *e.g., Industrial Phosphoric Acid from Israel: Final Results of Countervailing Duty Administrative Review,* 64 FR 2879, 2880 (January 19, 1999) (Israel IPA).

The question of what AUL to use becomes particularly acute in investigations where allocable subsidies have been received prior to the POI because AULs have not been calculated on an on-going basis. As a matter of convenience, we have elected as our practice to compute an AUL for the POI to determine how far back in time to capture allocable subsidies in our analysis. The alternative would be to have respondents calculate all of the AULs for years in which allocable subsidies were received in the past in the event the AUL for any of those prior years would happen to call for the allocation of the subsidies received in that year into the POI. This could be extremely burdensome for both respondents and the Department, and involve the use of very old information. Therefore, we find that calculating an AUL for the POI to be reasonable in that it uses information as close in time to the year of receipt of prior subsidies without posing a great burden on any party.

An exception occurs for allocable subsidies that have been countervailed in prior cases. Since the time period examined in any prior case will always be the same as, or earlier than, the POI for an on-going investigation, the information on the AUL for a company from a prior proceeding will always be as close or closer to the year of receipt for allocable subsidies being examined. Therefore, an AUL used to allocate a previously countervailed subsidy will be as accurate, or even more accurate, than an AUL calculated in an on-going investigation. If we were to attach different AULs to the same subsidy across proceedings, the possibility would arise of countervailing the same subsidy across different products by different amounts in any given period. Since a given subsidy intuitively should supply the same benefit to a company across all the relevant products during the same period of time, we find the method in *French Stainless* to be reasonable.

Based on the foregoing, we find that the use of an AUL from a prior investigation to allocate a previously countervailed subsidy to be reasonable and as accurate as possible without being burdensome. With respect to the respondents' argument regarding the application of the new discount policy described in 19 CFR 351.524, we disagree. The changes in the benefit stream brought about by application of a more realistic discount rate result in a better measure of the subsidy. For the reasons discussed above, using a more current AUL would not increase the accuracy of our benefit calculation.

Comment 14: 1991 Equity Infusion

The petitioners argue that the ''voluminous new evidence'' they submitted regarding the nature of and circumstances surrounding the GOF's infusion of equity into Usinor in 1991, which has not previously been considered by the Department, provides sufficient cause to believe that Usinor was unequityworthy and, therefore, that a countervailable subsidy had been conferred. The Department, the petitioners contend, has violated the statute by refusing to reinvestigate this equity infusion.

Department Position: The Department examined this program closely in *French Certain Steel* and found it to be non-countervailable. Faced with largely the same record evidence in *French Stainless,* the Department declined to reinvestigate this program in that proceeding. Likewise, we are not investigating this program in this proceeding. See Memorandum to Richard W. Moreland from Susan Kuhbach; Petitioners' Request for Initiation of 1991 Equity Infusion (July 16, 1999).

Comment 15: Shareholder Advances

The petitioners argue that the Department correctly found the 1982–86 shareholder advances to be countervailable subsidies. However, in the petitioners' view, the Department wrongly determined that these advances were grants in the years of bestowal (1982–86) rather than debts whose 1986 conversion to equity conferred a new subsidy in the year of conversion. While conceding that the Department's treatment of these advances in the *Preliminary Determination* is consistent with *French Certain Steel,* the petitioners contend that this approach results in an undervaluation of the benefit because the benefit stream has been pushed back farther in time. The correct approach, according to the petitioners, would be to treat the advances as loans in the year of bestowal, and then treat the conversion of these loans as a distinct, countervailable subsidy in the form of an equity infusion in 1986. The petitioners make the following points in support of their argument:

First, in *French Certain Steel* the Department characterized these advances as grants in part because there was no written agreement between the shareholders and Usinor at the time of the advances stipulating the terms of repayment. However, Usinor included these advances in the ''liabilities'' section of its audited financial statement, the same section in which PACs—which the Department found to be loans—where included. There is no such thing as a grant giving rise to a liability, and ''it is simply inconceivable that Usinor would have chosen to record (or that auditors would have permitted it to record) as liabilities funds for which it was not liable.''

Second, by reporting these advances as liabilities, Usinor clearly expected to have to make a repayment of some sort. In fact, in its questionnaire responses in *French Bismuth,* Usinor explicitly referred to these advances as ''loans'' which are ''. . . repayable on demand.'' Furthermore, in a Usinor-Sacilor condensed balance sheet submitted by the respondents in the *French Certain Steel* investigation, the shareholder advances are reported in the category ''long term debt.'' Also, Usinor issued the new stock to the GOF in 1986 to avoid taxation that would otherwise accompany the direct forgiveness of the shareholder advances.

Third, the Department cannot assume that because no formal repayment terms were written, no repayment was expected or required. Expert opinions from PriceWaterhouse and others indicate French accounting standards and French law clearly establish that where there is no written agreement regarding the terms of the repayment of a shareholder advance, the ''funds put at the disposal of a company by a shareholder cannot be recorded otherwise (sic) than as a liability of the company.'' The expert opinion further states that a French company may not ''register funds put at the disposal of a company as a grant without the written evidence of such intention from the provider.''

The respondents counter, first, by noting that the petitioners' arguments are largely the same as those which the CAFC considered and rejected in the petitioners' appeal of *French Certain Steel.* See *Inland Steel Indus., Inc.*

versus *United States,* 188 F.3d 1349 (Fed. Cir. 1999). According to the respondents, these arguments include: (1) shareholder advances were accounted for by Usinor and Sacilor as loans; (2) the conversion of the advances into common stock to avoid taxation demonstrates that they were loans; and (3) French law and accounting practice required treating them as loans. The ''new evidence'' submitted in this proceeding by the petitioners, the respondents contend, in fact consists of no new information over that reviewed by the CAFC in upholding the Department's determination in *French Certain Steel*. Therefore, these facts cannot ''overcome the preclusive or, at a minimum, *stare decisis* effect'' of the CAFC's finding.

The respondents further argue that the petitioners arguments in this regard become moot if the Department adopts—as the respondents argue it should—Usinor's 11-year AUL to allocate subsidies. Under this 11-year allocation period, the benefits from the 1986 shareholder advances would fall outside the POI.

Department Position: We disagree that, for purposes of calculating the correct benefit stream for these subsidies, the Department should treat the 1986 conversion of the shareholder advances to equity as a separate subsidy event. The respondents are correct in noting that the petitioners' arguments are largely the same as those which the CAFC considered and rejected in the petitioners' appeal of *French Certain Steel*. Although some additional information regarding this program is available on the record of this proceeding, this information does not include any substantive new facts that would merit a reevaluation of our findings in *French Certain Steel*.

In response to the petitioners' arguments, we start by noting the following excerpt from the Usinor Sacilor Verification Report in the *French Certain Steel* investigation (at 18).[4]

> Officials stated that the French versions of the companies' *Annual Reports* show the outstanding amounts of the shareholders' advance in the liabilities account ''dotation d'actionnaire.'' Officials explained that prior to the shareholders'' advance designated for SODIs, shareholders' advances were called ''dotation,'' which when translated means ''grant,'' ''capital advance,'' ''grant of capital,'' or ''capital injection.''
>
> We asked officials why the shareholders' advances received from 1982 through 1985 were reported under liabilities in the balance sheet. Officials explained that when the GOF paid shareholders' advances to Usinor and Sacilor, they were reported under liabilities because as cash was debited, the corresponding entry was a liability account. We also asked why the receipt of shareholders' advances was not originally reported as capital, given that they ultimately were converted to common stock. Officials explained that recording shareholders' advances under ''dotation d'actionnaire'' suggested, essentially, that the shareholders' advances were designated to become common stock rather than income. In 1986, when shareholders' advances were received to fund the SODIs, officials explained that they were placed under the account ''avance d'acctionnaire,'' indicating an ''advance of funds'' or ''loan.''

Several points are clear from the Usinor officials' above statements. First, at the time of receiving the shareholder advances, company officials expected that those funds would be converted into equity rather than repaid in cash or in some other more liquid form of reimbursement.

Second, Usinor officials perceived these shareholder advances as uniquely different from other sources of funds the company received, including shareholder advances for the SODIEs program, and signaled as much by including the advances in a specially designated category (''*dotation*'') indicating they were grants of capital. It is likewise telling that these shareholder advances are in a category entirely separate from the company's ''financial debts'' and ''operating debts.'' Contrary to the petitioners'' assertion, the ''PAC'' loans are included in the ''debts'' category of both Usinor and Sacilor's 1985 balance sheets, which is a distinctly separate category from shareholder advances.

Although the petitioners are correct that shareholder advances were reported under the heading ''long term debt'' in the Usinor-Sacilor condensed balance sheets, we do not find this information conclusive. The condensed balance sheet is clearly meant to be a summary of Usinor-Sacilor's combined asset and liability accounts, and its summary format does not supersede the more precise and specific breakout of accounts provided in the annual reports. We note, for example, that in the condensed statement, the PACs (*i.e.*, loans with special characteristics) comprise part of the ''total equity'' accounts whereas in the detailed balance sheets these loans are categorized as ''debts.''

Third, as Usinor officials implied, recording these advances as ''liabilities'' was necessitated by the basic tenets of double-entry bookkeeping. An infusion of cash into a company is recorded in an accounting system by means of two entries: one ''on the left side'' of the balance sheet (a debit to the cash account), and one ''on the right side'' of the balance sheet (in this case, a credit to shareholder advances). The petitioners are incorrect in their assertion that a grant cannot involve an entry in the ''liabilities'' category of the company's accounts. A cash infusion in the form of a grant to Usinor would increase the value of assets, which would have to be matched by a corresponding increase in the value of either the equityholders' or the debtholders' stake in the company. However, as evidenced by the very financial statements cited by the petitioners, both debt and equity in Usinor/Sacilor's financial statements are included in the ''*passif*'' (liabilities) category. A cash infusion in the form of a loan would have the same effect on the company's assets and ''liabilities'' accounts as a grant infusion. Therefore, the fact that the shareholder advances are recorded as a liability is irrelevant to the issue of whether an infusion is a grant or a loan.

With regard to the petitioners' expert opinion from PriceWaterhouse on French accounting and law, we note that the Price Waterhouse opinion states that a shareholder advance must ''become part of the company's liability and must be recorded as a debt.'' The evidence on the record, however, flatly refutes the later portion of this statement. In neither the Usinor or Sacilor balance sheets are these shareholder advances included in the debt category. And the Auditor's Report for these statements makes no indication that the reporting of these advances is incorrect or misleading.

Finally, our comments above notwithstanding, the meaning of shareholder advances according to French accounting standards is ultimately irrelevant to how we calculate the benefit from these subsidies in this instance. Under the Department's established methodology, this program is properly treated as a grant in the year of receipt because, for as long as these funds were considered to be shareholder advances, there was no expectation of a: (1) repayment of the grant amount, (2) payment of any kind stemming directly from the receipt of the grant, or (3) claim on any funds in case of company liquidation. See the GIA (58 FR at 37254).

[4] Memorandum to Susan H. Kuhbach, from Julie Anne Osgood and Susan Strumbel; Verification of the Responses of Usinor Sacilor in the Countervailing Duty Investigations of Certain Steel Products from France (April 9, 1993), Attached to Memorandum to Case File, Excerpts Regarding Shareholder advances from Certain Steel Usinor Verification Report (December 13, 1999).

Comment 16: SODIEs

In 1983, Usinor and Sacilor established regional development subsidiary companies, subsequently to be known as SODIEs, to promote the retraining of redundant steelworkers. From 1983 through the mid-1990s, Usinor provided funds to the subsidiary SODIEs which, in turn, loaned these funds to local enterprises providing the worker retraining. Starting in 1986, the GOF agreed to provide to the SODIEs (through Usinor) additional funds matching the amount of Usinor's contribution. In return, Usinor agreed to expand the coverage of its SODIEs into other depressed regions of France. In *French Certain Steel,* the Department determined that these GOF contributions were not countervailable because they represented the GOF's share of the SODIE program and were used only for GOF purposes, not to support Usinor's steel operations. We further found that the GOF's contributions did not relieve Usinor from any costs or obligations it would otherwise have been required to incur.

The petitioners argue that the Department should find the post-1991 payments from the GOF to Usinor in support of the SODIES to be countervailable subsidies. First, the petitioners argue, the Usinor Group (including the subsidiary SODIEs) was entitled to keep full repayment (both principal and interest) of the GOF's share of the loans that the SODIEs provided to the local entities. This entitlement to repayment of the GOF's funds constitutes a grant. Second, the petitioners claim that neither the GOF nor Usinor has established that the GOF's contributions did not relieve Usinor of certain obligations to retrain redundant steelworkers. Finally, with respect to the post-1991 advances, the petitioners state that the European Commission has conceded that the SODIE advances are a financial contribution which confers a benefit, as evidenced by the EC's notification of the SODIE program to the World Trade Organization (WTO).

The petitioners also object to the Department's decision not to reinvestigate the pre-1992 SODIE contributions by the GOF. (The pre-1992 contributions were found to be not countervailable in *French Certain Steel.*) According to the petitioners, the Department failed to consider whether the GOF's SODIE contributions were ultimately grants to Usinor. The petitioners also object to the Department's finding that Usinor was not relieved of any obligations by the GOF's SODIE contributions.

The respondents counter, to start, by noting that the Department has not reinitiated an investigation into the 1980s SODIE advances and, therefore, the petitioners' arguments that the Department should find these countervailable are not relevant. With regard to the post-1990 SODIE payments by the GOF, the respondents state that the petitioners have not shown how these are materially different from the 1980s SODIEs payments, which the Department has previously found to be not countervailable.[5] Although there is additional evidence on the record of this proceeding, none of it supports a different conclusion regarding the countervailability of the program.

Specifically with regard to the petitioners' argument that a benefit was conferred on Usinor because it was entitled to repayment by the SODIEs of funds provided by the GOF, the respondents state that the Department has already considered this fact with regard to the 1980s GOF payments and, nevertheless, found that the payments made by the GOF do not confer a benefit on Usinor. This is because upon repayment of the loan, the funds were simply loaned out again. The respondents also state that, in addition to passing the GOF's contributions on to the SODIEs, Usinor made its own contributions to the SODIEs that exceeded substantially the GOF's contributions.

Finally, the respondents contend, the EC notification of the SODIE program to the WTO does not represent a concession that the GOF's payments were a subsidy to Usinor. In fact, the notification states that the loans ''are not financed by the State funds but by the Usinor-Sacilor iron and steel group.'' Rather, the program was notified because the GOF was providing assistance to particular regions—unrelated to Usinor's assistance to steel producing regions—for which notification was appropriate.

Department's Position: On September 21, 1999, just prior to verification, the Department formally notified the respondents that it was initiating an investigation of the post-1991 GOF advances to Usinor under the SODIE program. The decision to initiate was based on questions raised by factual information submitted by the petitioners regarding the EC's notification of the SODIE program to the WTO, and the reporting of the SODIE funds in Usinor's financial statements.[6] On October 18, 1999, the Department sent a questionnaire soliciting information from the respondents and the GOF regarding this program.

The Department received questionnaire responses regarding the SODIE program from both the GOF and the respondents on November 3, 1999. In their respective questionnaire responses, both the GOF and the respondents stated that because the respondents did not apply, use, or benefit from the SODIE program during the POI, in accordance with the questionnaire instructions, no detailed response was required. Consequently, neither party provided complete details regarding the specificity of the program, or any financial contributions or benefits Usinor may have received under this program. The parties did, however, provide a general history of, and comments on, the SODIE program and the WTO's notification.

Notwithstanding these general responses to the Department's questionnaire, we find that we do not have sufficient information at this time to determine whether this program represents a countervailable subsidy. In particular, Usinor has claimed that it made contributions to SODIE that exceed the GOF's contributions and that Usinor loans to SODIE are reclassified as ''risk and losses.'' Without further questioning, we are not able to track these amounts in Usinor's financial statements. We note that we initiated our investigation of the post-1991 SODIE contributions because the data presented in Usinor's financial statements did not reflect our understanding of the program. Without a full understanding of the amounts contributed by the GOF and Usinor, we are not in a position to say whether the post-1991 advances should be viewed differently from the pre-1992.

Because an investigation of the post-1991 SODIE advances was not initiated in time to solicit adequate, verified information from all of the necessary respondents, we have no basis upon which to use adverse facts available with respect to this program. Accordingly, we are not making a determination on the countervailability of the SODIE program in this investigation. Should a countervailing duty order be put in place, however, we will solicit information on the post-1991 SODIE advances in a future

[5] This determination, the respondents note, was subsequently upheld by the CIT in *Inland Steel*, 967 F. Supp. at 1366–68.

[6] *See Memorandum to Richard Moreland from Susan Kuhbach; Inclusion of Previously Investigated Programs in the Countervailing Duty Investigation of French Steel Plate* (September 21, 1999).

administrative review, if one is requested. *See* 19 CFR 351.311(c)(2).

We note, moreover, that based on the limited information the respondents have submitted, any potential benefits to Usinor during the POI from the SODIE program appear to be very small and, therefore, would likely have little or no impact on the overall *ad valorem* subsidy rate. See Memorandum to the file, Calculations for Final Determination, December 13, 1999.

Comment 17: Foreign Ownership

The petitioners argue that 19 CFR 351.525(b)(7) makes clear that subsidies are allocable to all domestic production regardless of the nationality of the owner of that production where it states:

> If the firm that received the subsidy has production facilities in two or more countries, the Secretary will attribute the subsidy to products produced by the firm within the country of the government that granted the subsidy. However, if it is demonstrated that the subsidy was tied to more than domestic production, the Secretary will attribute the subsidy to multinational production.

Therefore, state the petitioners, any subsidies allocated to DHS will be tied to DHS' French production only. The petitioners point out that if the Department were to adopt a policy of reducing the level of past subsidies in any way in response to a purchase of a company by a foreign entity, then governments could shield against countervailing duties by selling shares in domestic producers to foreign entities.

Department's Position: We agree with the petitioners that it is not the nationality of the owner of the productive unit that matters; rather, it is the nationality of the productive unit, itself, that is of consequence. If a unit is cross-owned by a company that receives untied subsidies and both are in the same country, we would attribute the subsidy benefits to both. For a subsidy to be considered trans-national and, therefore, not countervailable, it would have to be given by a government in one country to a company in a different country. The owners of the subsidy recipient are of no consequence in making transnational determinations.

Comment 18: Discount Rates

The petitioners state that in calculating benchmark interest rates, the new regulations require the Department to use as a base rate a long-term interest rate that would be paid by a creditworthy company. The petitioners state that there are a number of possible creditworthy rates on the current record and that, of those rates, the Department should choose the OECD-published ''Medium Term Credit to Enterprises, 3–7 years'' (MTCE) rates which are rates that are both long-term and rates which would be paid by a creditworthy company.

The respondents take issue with the petitioners' attempt to increase the creditworthy interest rate used in the Department's uncreditworthy interest rate calculation. The respondents argue that the bond rates selected by the Department in the *Preliminary Determination* are the most appropriate rates to use to match to default rates of corporate bond issuers as contemplated by section 351.505(a)(3)(iii) of the *CVD Regulations.* The respondents point out that the MTCE rates recommended by the petitioners are not appropriate because these rates apply to credit that is for a much shorter period of time than is typical of private sector bonds. Furthermore, respondents believe that the MTCE rates recommended by the petitioners do not match with either the bond default rates currently used or with the Department's AUL-determined benefit stream. With respect to the IMF rates, the respondents point out that they have been previously rejected by the Department as unrepresentative of long-term corporate borrowing (*see French Certain Steel*).

Department's Position: We agree with the petitioners that the Department has a variety of creditworthy interest rates on the record to select from. In calculating a creditworthy benchmark rate for use in years in which Usinor was creditworthy, but did not have a company-specific interest rate, and for use in constructing uncreditworthy benchmark rates for years in which it was not creditworthy, we applied the methodology as described in section 351.505(a)(3) of the *CVD Regulations.* This methodology requires the use of a long-term interest rate that would be paid by a creditworthy company.

On the record of the instant proceeding, there are several interest rates that could serve as the long-term interest rates that would be paid by a creditworthy company, *i.e.,* MTCE and equipment loan rates as published by the OECD, cost of credit rates published in the *Bulletin of Banque de France,* and private sector bond rates as published by the International Monetary Fund. With respect to the equipment loan rates, the cost of credit rates, and the private sector bond rates, the Department determined in prior cases that these rates are indicative of a creditworthy company's long-term cost of borrowing, *see French Certain Steel* (58 FR at 37314) and *French Stainless* (64 FR at 30790). Although the Department has not previously used the MTCE rates, there is no record information indicating that they would be not indicative of a creditworthy company's long-term cost of borrowing. In addition, there is no evidence on the record of this proceeding indicating that any of these rates is more appropriate than the others for purposes of constructing a creditworthy benchmark rate. Therefore, for this final determination, we are using an average of these creditworthy long-term interest rates to calculate a non-company-specific creditworthy benchmark rate.

Contrary to the respondents' argument, the Department's regulations require the use of a long-term interest rate, not an interest rate that equals the term of a company's AUL or matches the term of the other interest rates being used. We did not include the IMF-published line 60p ''lending rates'' because the Department has determined that these interest rates are unrepresentative of the cost of corporate long-term borrowing. *See French Certain Steel* (58 FR at 37315).

Comment 19: Sales Denominators

The petitioners state that the sales values used by Department in its preliminary determination were inflated because they included substantial transfers occurring between members of the Usinor Group. The petitioners argue that the 1998 Usinor net sales of 9.4 billion euros, as reported in its annual report, is a gross amount which includes intersegment sales occurring within the Usinor Group and that this figure does not represent the sales revenue derived by the Group from selling French merchandise to outside parties. Instead, the petitioners argue, the correct sales figure is 8.3 billion euros as reported in the annual report as total sales (or net sales minus intersegment sales).

The petitioners state that due to the manner in which GTS determines its sales revenues, it is impossible to judge whether the sales value reported by GTS is legitimate. However, the petitioners point out that there was an error in the company's calculations of its POI sales revenue as made clear by the GTS verification exhibit detailing this calculation.

The respondents take issue with the petitioners' claim that Usinor based its 1998 sales figure of French-produced merchandise on the wrong line item in its 1998 Annual Report. Respondents argue that the figure accepted by the Department includes sales of French-produced merchandise to members of the Usinor Group outside France. This is in accordance with Financial Accounting Standard 14 which requires exclusion of intercompany sales within France in order to avoid double-counting of French production. Respondents argue that the line item entitled ''intersegment sales'' represents sales from one geographical segment to another geographical segment (e.g., from France to the United States) for which sales are reported.

The respondents argue that Usinor's use of the amount in the ''net revenue'' column is consistent with the calculation of the French-only sales denominator in *French Certain Steel.* The respondents point out that this methodology was also upheld in Court, *see Inland Steel Industries, Inc., et al,* v. *United States,* 967 F. Supp. 1338, 1368(CIT 1997) (Inland Steel). The respondents believe that the petitioners have no reason and cite no precedent for excluding intersegment sales within the Usinor Group. The respondents maintain that these sales are real sales carried out under arm's-length conditions. Lastly, the respondents argue that most of Usinor's U.S. sales are to affiliates and that the petitioners would never contend that any subsidies found should not be allocated to these intercompany sales.

Department Position: We disagree with the petitioners that the appropriate net sales amount for Usinor should be net of intersegment sales. According to the *Interpretation and Application of International Accounting Standard for 1998,*[7] ''intersegment sales'' are defined as ''transfers or products or services, similar to those sold to unaffiliated customers, between industry segments or geographic areas of the enterprise.'' Therefore, since Usinor's intersegment sales are similar to those sold to unaffiliated customers, and there is no regulatory or statutory requirements to exclude these sales, the Department will continue to include them in Usinor's net sales amount for the POI.

With respect to the petitioners' argument that it is impossible to judge whether the sales value reported by GTS is legitimate, we disagree. While the manner in which GTS records its sales value is unusual, we do not find it to be inherently distortional. Therefore, the verified sales value for GTS is appropriate to use in the calculations for the final determination. Although GTS made a slight error in calculating its reported POI sales value, it is not the error alluded to by the petitioners. The ''error'' referred to by the petitioners is not an error because the adjustment they said should have been done was made in a later stage of the calculation. For more information, see the GTS verification report.

Comment 20: FOB Calculation

The petitioners argue that Usinor's reported FOB adjustment is inconsistent with other publicly available data for plate imports from France. The petitioners maintain that Usinor understated the FOB port adjustment by only including ocean freight in its shipping expenses. The petitioners argue that there are other costs such as insurance which should have been deducted which Usinor failed to account for in its calculations. The petitioners argue that the Department only verified that there were no discrepancies with Usinor's reported shipping costs, but it did not verify that there were other expenses such as insurance which should also be included in the FOB adjustment. The petitioners urge the Department to apply a more meaningful and realistic FOB port adjustment to Usinor's sales for the final determination.

Additionally, the petitioners argue that the same FOB adjustment was used to adjust GTS' French merchandise sales value with no indication of whether: (1) GTS was more or less export-intensive than the Usinor Group as a whole or (2) GTS' costs for shipping, insurance and other items were higher or lower than those of the Usinor Group as a whole. Furthermore, the petitioners point out that the Department did not verify GTS' FOB adjustment and whether it should be identical to that of the Usinor Group.

The respondents take issue with the petitioners' complaint that Usinor's FOB sales adjustment is too small because it does not include insurance and other non-shipping costs. The respondents point out that the FOB adjustment made by Usinor in this investigation was verified and is precisely the same methodology used in *French Certain Steel* and *French Stainless.* The respondents assert that the petitioners also made this same argument on appeal from *French Certain Steel,* and that the Court rejected those challenges, *see Inland Steel,* 967 F. Supp. at 1368–69.

Department Position: We agree with the respondents. Usinor has indicated that it does not maintain FOB (port) value information, as requested in the Department's questionnaire, in the regular course of business. Therefore, Usinor reported an FOB adjustment based on the methodology that was used and verified in the *French Stainless.* This methodology derived Usinor's estimated FOB value by calculating a shipping expense based on the expenses of a sample of Usinor Group companies (including ocean freight, loading and port/terminal fees) and dividing the shipping expenses by the 1998 net sales of the sampled companies to derive the ratio of shipping costs to net sales. At verification we found no reason to suspect that this methodology was distortional, rather, we found it to be a reasonable methodology for deriving Usinor's sales value on an FOB (port) basis.

With respect to the petitioners' argument that the Department accepted the same FOB adjustment for GTS without verifying whether or not it should be the same, there is no record information indicating that it would not be an inappropriate estimate. Furthermore, the Department has consistently recognized that given the vast amount of information provided during the course of an investigation and the strict time constraints imposed on the proceeding and particularly, verification, it is simply not possible to examine each and every piece of information provided by the respondents. The Department has taken the position that by testing the validity and integrity of a significant amount of relevant information, the small portion of the remaining information not examined cannot be considered inaccurate or incomplete.

In this instance, the responding companies had reported a single FOB adjustment to be applied to the sales of the Usinor Group and GTS. As discussed in Usinor's verification report, see Memorandum to the File dated November 4, 1999 regarding ''Results of Verification of Usinor,'' this adjustment was derived by calculating the total shipping expenses of four companies within the Usinor Group: Sollac, Ugine, Unimetal and Ascometal. Although this adjustment does not include the shipping costs of GTS or CLI (also a producer of subject merchandise), we consider it to be a more reasonable estimate of shipping costs incurred by GTS than the use of the difference between the customs value and the landed value as suggested by the petitioners since the landed value could include other expenses which are not representative of the respondents' shipping costs. Nevertheless, we acknowledge that the respondents' calculation of the FOB adjustment did not include amounts for insurance. Should a countervailing duty order be put in place, we will examine this issue further in an administrative review, if one is requested.

Therefore, for the purposes of this final determination, we have continued to use the FOB adjustment reported by the responding companies and verified

[7] Excerpts are found attached to the Memorandum to the file on International Accounting Standards of December 1, 1999.

by the Department. We note, however, that in the event a countervailing duty order is put in place and an administrative review of GTS occurs, GTS will be required, as a separate entity, to report its own sales values on an FOB basis.

Comment 21: Mid-Year Grant Allocation Assumption

The petitioners take issue with the Department's allocation methodology for non-recurring benefits codified as 19 CFR 351.503(c)(4)(i). According to the petitioners, this methodology is biased in favor of respondents in the following respects:

First, the methodology assumes that the benefit was received on the first day of the first year instead of, on average, midway through the year, the petitioners claim. In so doing, claim the petitioners, it reduces the remaining, unallocated portion of the benefit that goes into subsequent years. Since it is on this unallocated portion that the time value of money calculation is attached, the petitioners argue that the benefits in subsequent years are artificially reduced.

Second, the Department's methodology provides that the yearly portion of the benefit that is amortized in subsequent years is also credited as of the first of the year, *i.e.,* no time value of money calculation is made for that portion during that year, according to the petitioners. In reality, argue the petitioners, the yearly portion of the benefit would be expended over the course of the year and another time value of money calculation would be appropriate on that yearly portion. As a result of the yearly portion being credited as of the first of the year, state the petitioners, the remaining unallocated amount of the benefit that gets moved to future years is artificially reduced at the beginning of the year instead of across the span of the year. Accordingly, point out the petitioners, the calculation of the time value of money attached to the remaining unallocated amount is also artificially reduced.

The petitioners propose adopting the assumption that benefits are received mid-year in order to neutralize the bias in the Department's methodology. To this end, the petitioners provide calculation methodologies.

The respondents note that the petitioners made these same arguments during the Department's recent countervailing duty rulemaking proceedings and that the Department rejected them. According to the respondents, the petitioners must either challenge the particular regulation that embodies the Department's grant allocation formula as unlawful or seek a new rulemaking proceeding.

Department Position: The petitioners' approach to allocating subsidies was presented to the Department during the comment period of the CVD Regulations. *See* CVD Regulations, 63 FR at 65399. In finalizing its CVD Regulations, the Department considered and chose not to adopt the methodology proposed by petitioners. We continue to follow our policy as explained in the Preamble to the *CVD Regulations.*

Verification

In accordance with section 782(i)(1) of the Act, except as noted above, we verified the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for Usinor (including CLI and Sollac) and GTS, the sole manufacturers of the subject merchandise. We determine that the total estimated net subsidy rate is 5.56 percent *ad valorem* for Usinor and 6.86 percent *ad valorem* for GTS. The All Others rate is 6.80 percent, which is the weighted average of the rates for both companies.

In accordance with our *Preliminary Determination,* we instructed the U.S. Customs Service to suspend liquidation of all entries of carbon-quality plate from France, which were entered or withdrawn from warehouse, for consumption on or after July 26, 1999, the date of the publication of our *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after November 23, 1999, but to continue the suspension of liquidation of entries made between July 26, 1999 and November 22, 1999. 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 above. 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.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, 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

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: December 13, 1999.

Robert LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33238 Filed 12–28–99; 8:45 am]

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federal register

Wednesday,
December 29, 1999

Part III

Environmental Protection Agency

40 CFR Part 89 et al.

Control of Emissions of Air Pollution From New Marine Compression-Ignition Engines at or Above 37 kW; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 89, 92, and 94

[AMS–FRL–6482–3]

RIN 2060–AI17

Control of Emissions of Air Pollution From New Marine Compression-Ignition Engines at or Above 37 kW

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: In this action, we are establishing an emission control program for new marine diesel engines rated at or above 37 kilowatts. The affected engines are used for propulsion and auxiliary purposes in a wide variety of marine applications. The standards for these engines will require substantial reductions in oxides of nitrogen and particulate matter emissions to correspond with the next round of emission standards for comparable land-based engines. The standards will lead to significant reduction in oxides of nitrogen and particulate matter emissions from this source. When combined with other mobile source emission control programs, the program described in this action will help provide long-term improvements in air quality in many port cities and other coastal areas. Overall, these emission standards provide much-needed assistance to states facing ozone and particulate air quality problems, which can cause a range of adverse health effects for their residents, especially in terms of respiratory impairment and related illnesses.

The persons potentially affected by this action are those who manufacture new marine diesel engines or marine vessels or other equipment using such engines. Additional requirements apply to companies that rebuild or maintain these engines.

DATES: This final rule is effective January 28, 2000 except the amendments to 40 CFR parts 89 and 92 will become effective February 28, 2000, unless EPA receives adverse comment on or before January 28, 2000 regarding the amendments to 40 CFR parts 89 and 92. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the amendments to 40 CFR parts 89 and 92 will not take effect.

The incorporation by reference of certain publications listed in the regulations in 40 CFR part 94 is approved by the Director of the Federal Register as of January 28, 2000.

ADDRESSES: Materials relevant to this rulemaking, including the Final Regulatory Impact Analysis, are contained in Public Docket A–97–50. Additional materials can be found in Public Docket A–92–28 (Control of Air Pollution; Emission Standards for New Gasoline Spark-Ignition and Diesel Compression-Ignition Marine Engines). For the changes to 40 CFR part 92, additional materials can be found in Public Docket A–94–31 (Emission Standards for Locomotives and Locomotive Engines). These dockets are located at Room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460. You may inspect the docket from 8:00 a.m. until 5:30 p.m., Monday through Friday. We may charge a reasonable fee for copying docket materials.

For further information on electronic availability of this action, see **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Alan Stout, Office of Mobile Sources, (734) 214–4805, *stout.alan@epa.gov.*

For a copy of the Information Collection Request, contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at *farmer.sandy@epamail.epa.gov,* or download it off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1897.02.

SUPPLEMENTARY INFORMATION:

Regulated Entities

You may be regulated by this action if you manufacture or introduce into commerce new marine diesel engines or if you make vessels or other equipment using these engines. Other requirements may apply to you if you rebuild or maintain marine engines. Regulated categories and entities include:

Category	Examples of regulated entities	NAICS Code	SIC Code
Industry	Manufacturers of new marine diesel engines	333618	3519
Industry	Manufacturers of marine vessels	3366	3731 3732
Industry	Engine repair and maintenance	811310	7699

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether particular activities may be regulated by this action, carefully examine the regulations, especially the applicability criteria in § 94.1. Direct any questions regarding the applicability of this action to the person listed in **FOR FURTHER INFORMATION CONTACT**.

Obtaining Electronic Copies of the Regulatory Documents

The preamble, regulatory language and Final Regulatory Impact Analysis are also available electronically from the EPA Internet Web site. This service is free of charge, except for any cost already incurred for internet connectivity. The electronic version of this rulemaking is made available on the day of publication on the primary Web site listed below. The EPA Office of Mobile Sources also publishes **Federal Register** notices and related documents on the secondary Web site listed below.

1. http://www.epa.gov/docs/fedrgstr/EPA–AIR/ (either select desired date or use Search feature)
2. http://www.epa.gov/oms/ (look in What's New or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc., may occur.

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I. Introduction

A. Background

The Clean Air Act as amended in 1990 mandated that we establish emission regulations for a variety of previously unregulated nonroad mobile sources of emissions, including marine engines. We most recently proposed emission standards and an associated compliance program for commercial marine diesel engines on December 11, 1998 (63 FR 68508).[1] At a public hearing on January 19 and in the rest of the comment period we heard from 35 commenters. The program we are finalizing here follows from the approach described in the proposal, though we made numerous adjustments in response to the comments and other information received since the proposal. The proposal included an extensive discussion of the air quality problems we are addressing and the regulatory history of this rulemaking (see Sections I, II, and XI of the proposal). A summary description of the final rule follows in this document. Further discussion of issues and the anticipated impacts of the final rule are in the Final Regulatory Impact Analysis (Final RIA) and the Summary and Analysis of Comments. These documents and all the comments we received are contained in Docket A–97–50.

The International Maritime Organization (IMO) is the Secretariat for the International Convention on the Prevention of Pollution from Ships 1973, as modified by the Protocol of 1978 relating thereto (better known as MARPOL 73/78). Annex VI to that Convention, adopted on September 27, 1997 (but not yet in force) contains, among other provisions, requirements to limit NO_X emissions from marine diesel engines, but sets no limits for other engine pollutants (*i.e.,* HC, CO, PM). Other provisions of Annex VI include requirements for ozone-depleting substances, sulfur content of fuel, incineration, VOCs from refueling, and fuel quality. The United States has signed Annex VI, but the Annex has not yet been forwarded to the Senate for its advice and consent.

B. Statutory Authority

We conducted a study of emissions from nonroad engines, vehicles, and equipment in 1991, as directed by the Clean Air Act, section 213(a) (42 U.S.C. 7547(a)). Based on the results of that study, we determined that emissions of NO_X, VOCs (including HC), and CO from nonroad engines and equipment contribute significantly to ozone and CO concentrations in more than one nonattainment area (see 59 FR 31306, June 17, 1994). Given this determination, section 213(a)(3) of the Act requires us to establish (and from time to time revise) emission standards for those classes or categories of new nonroad engines, vehicles, and equipment that in our judgment cause or contribute to such air pollution. We have determined that commercial and recreational marine diesel engines rated over 37 kW cause or contribute to such air pollution (See also the preamble to the proposed rule).

Where we determine that other emissions from new nonroad engines, vehicles, or equipment significantly contribute to air pollution that may reasonably be anticipated to endanger public health or welfare, section 213(a)(4) authorizes EPA to establish (and from time to time revise) emission standards from those classes or categories of new nonroad engines, vehicles, and equipment that cause or contribute to such air pollution. We have determined that commercial and recreational marine diesel engines rated over 37 kW cause or contribute to such air pollution (See also the preamble to the proposed rule).

II. Scope of Application

Clean Air Act section 213(a)(3) broadly sets the scope of application of this final rule, instructing us to promulgate regulations containing standards applicable to emissions from those classes or categories of new nonroad engines and new nonroad vehicles that are found to cause or contribute to ozone or carbon monoxide concentrations in more than one nonattainment area. As explained below and in the text of the regulations, the rulemaking generally covers all new diesel engines installed in a marine vessel, and all new marine vessels that use those engines. This includes both propulsion and auxiliary engines.

A. Definition of New

We are extending the definition of ''new'' contained in 40 CFR 89.2 to marine diesel engines at or above 37 kW. Under that definition, an engine is considered new until its legal or equitable title has been transferred, or the engine has been placed into service. Because the definition of new in 40 CFR 89.2 applies to both engines and equipment, its extension to the marine sector extends as well to vessels. Starting with the implementation dates of the new emission standards, we will consider vessels new until their equitable or legal title has been transferred to an ultimate purchaser. In addition, we will consider a vessel new if it undergoes modifications such that the modified vessel derives at least half

[1] The December 1998 proposal superseded earlier proposed emission standards for marine diesel engines (59 FR 55929, November 9, 1994, and 61 FR 4600, February 7, 1996). References in this document to ''the proposal'' or ''the proposed rule'' refer only to the December 1998 proposal.

of its value from new materials or components. This prevents someone from re-using the hull or other parts from a used vessel to avoid emission standards.

To further clarify the definition of ‘‘new,’’ 40 CFR 89.2 specifies that a nonroad engine, vehicle, or equipment is placed into service when it is used for its functional purpose. For the purpose of applying this criteria to marine diesel engines and new vessels, we have concluded that a marine diesel engine is used for its functional purpose when it is installed on a marine vessel. This clarification is needed because some marine diesel engines are made by modifying a highway or nonroad engine that has already been installed on a vehicle or other equipment. In other words, the engine has been transferred to an ultimate purchaser after it is used for its functional purpose as a land-based nonroad engine (for example, on a truck or a backhoe) and is therefore no longer new, but it is later removed for marinization and installation on a marine vessel. While the 40 CFR 89 requirements for land-based nonroad diesel engines do not contain such a requirement, we believe it is reasonable to treat these engines as new marine engines when they are installed on a vessel. While the practice of marinizing used highway or nonroad engines may be infrequent, it could become more common if these engines are not subject to the standards finalized in this document.

As described in the proposal, we are not applying emission standards to remanufactured engines. In Section VI we discuss the potential for considering this issue in the future.

B. Importing and Exporting Marine Engines

Engines imported for use in the United States are covered by this final rule whether they are imported as loose engines or are already installed on a vessel constructed elsewhere. We will require all imported engines to have a certificate of conformity from us before anyone may enter them into commerce in the United States, subject to limited exemptions. Accordingly, we are applying the approach contained in other highway and nonroad engine programs, according to which any engine or vessel that is imported into the United States without a valid certificate of conformity and that was built after the effective date of the applicable standards, will be considered new at the time it is imported into the United States. As a new engine, it will have to comply with the relevant emission limits in effect at the time it was manufactured. Thus, for example, a marine vessel manufactured in a foreign country in 2007 that is imported into the United States in 2010 would be considered new, and its engine would have to comply with the emission limits in effect for model year 2007. This provision is important to prevent manufacturers from avoiding the emission requirements by building vessels abroad, transferring their title, and then importing them as used vessels.

Engines that are to be exported to countries with emission standards different than ours are exempt from the requirements of this final rule. Marine engines that are exported but are subsequently re-imported into the United States must, however, meet the new emission standards that apply based on the manufacturing date of the engine. This would be the case when a foreign company purchases marine engines manufactured in the United States for installation on a vessel that will be subsequently exported to the United States. It would also be the case when a foreign company purchases marine engines manufactured in the United States for dressing and subsequent re-exportation to the United States. Engines that are intended for export but that will be re-imported into the United States are subject to the emission standards at the time the engine is manufactured, unless the vessel manufacturer or marinizer intends to re-certify the engines to comply with emission standards before they enter the United States. Consequently, foreign purchasers who do not wish to recertify the engines will need to make sure they purchase complying engines for those marine vessels or engines they intend to subsequently offer for sale in the United States. Engines intended for export and sale in a foreign country should be easily distinguishable from complying engines because complying engines are required to be labeled as such. Any person who introduces into commerce in the United States a noncomplying engine that is intended for export and use in a foreign country will be subject to civil penalties.

To determine when an engine or vessel will be considered ‘‘imported’’ for the purposes of determining compliance with emission standards, we will follow the approach contained in the Harmonized Tariff Schedule of the United States (HTSUS). According to HTSUS, vessels used in international trade or commerce or vessels brought into the territory of the United States by nonresidents for their own use in pleasure cruising are admitted without formal customs consumption entry or payment of duty.[2] This approach is consistent with the Treasury Department’s ruling, which concluded that vessels coming into the United States temporarily as carriers of passengers or merchandise are not subject to customs entry or duty, but if brought into the United States permanently, they are to be considered and treated as imported merchandise. *See American Customs Brokerage Co., Inc., a/c Astral Corp.* v. *United States,* 375 F. Supp. 1360, 1366 (Cust. Ct. 1974). This means that engines installed on vessels flagged in another country that come into the United States temporarily will not be subject to the emission standards, because they are not imported and are therefore not new engines under Clean Air Act Section 216(3) and 213(d).

C. Marine Engine Definitions

In the final land-based nonroad engine rule, we determined that a portable auxiliary engine used onboard a marine vessel should not be considered a marine engine (October 23, 1998, 63 FR 56967). Instead, a portable auxiliary engine is considered to be a land-based engine subject to the requirements of 40 CFR Part 89. To distinguish a marine auxiliary engine installed on a marine vessel from a land-based portable auxiliary engine used on a marine vessel, we specified in that rulemaking that an auxiliary engine is installed on a marine vessel if its fuel, cooling, or exhaust systems are an integral part of the vessel. These auxiliary engines are therefore not fundamentally different than land-based engines and we regulate them under 40 CFR Part 89.

With very few exceptions, this final marine engine rule applies equally to propulsion and auxiliary engines. Consistent with the definitions in 40 CFR Part 89, a propulsion engine is one that is intended to move a vessel through the water or assists in guiding the direction of the vessel (including, for example, bow thrusters). Auxiliary engines are all other marine engines. Propulsion and auxiliary engines have different duty cycles and different load factors for calculating emission credits. Auxiliary engines will not be subject to not-to-exceed requirements until we finalize them for land-based nonroad engines. Also, auxiliary engines are not eligible to qualify as recreational engines.

[2] HTSUS (1994), Additional U.S. Note 1. In particular, cruise ships, ferry boats, cargo ships, barges and ‘‘similar vessels for the transportation of persons or goods’’ are duty free. HTSUS (1994) 8901.

Marine drilling platforms are another example of an application where the question arises of whether an engine is a marine engine (subject to 40 CFR Part 94) or a land-based nonroad diesel engine (subject to 40 CFR 89). Drill ships are clearly marine vessels, so engines installed in drill ships are marine engines. In contrast, permanently anchored drilling platforms would not qualify as marine vessels, so none of the engines associated with one of these facilities would be a marine engine. A third class of drilling equipment is less clear. Semi-submersible drilling rigs are moored to the ocean bottom, but have some propulsion capability. We consider these to be marine vessels, so any engine that is ''installed'' on such a rig would be a marine engine. As described above, we would consider portable engines on a drilling rig to be land-based nonroad engines, since they are not installed on the vessel.

D. Remanufactured Engines

As described in the proposed rule, we are not setting emission standards for engines originally manufactured before the Tier 2 standards take effect. Section VI describes our ongoing concern with remanufactured engines.

E. Recreational Engines

We continue to believe, as we discussed in the proposal, that it is appropriate to distinguish between commercial and recreational marine engines for the purpose of establishing requirements for engine and vessel manufacturers. This is because the performance characteristics for these two kinds of engines can be substantially different, due to the different characteristics of the vessels on which they are installed. Commercial marine vessels tend to be displacement hull vessels, designed and built for a unique application. Power ratings for engines used on these vessels are analogous to land-based applications, and these engines are warranted for 2,000 to 5,000 hours of use a year. Recreational vessels, on the other hand, tend to be planing vessels, and engines used on these vessels are designed to achieve higher power output with less engine weight. This increase in power reduces the lifetime of the engine; recreational marine engines are therefore warranted for fewer hours of operation than their commercial counterparts.

We will be pursuing emission limits for recreational marine engines in a separate rulemaking. This makes it necessary to clearly define recreational marine engine, so engine manufacturers and users will be able to know which set of standards apply to their engine.

In this final rule, we are finalizing a definition of recreational marine engine as a propulsion engine that is intended by the manufacturer to be installed on a recreational vessel. To ensure that users will not install a recreational engine on a commercial vessel his engine, we are requiring the following label language (in our proposed rulemaking for recreational marine engines, we will also address any changes that would be appropriate or necessary for this label):

THIS ENGINE IS CATEGORIZED AS A RECREATIONAL ENGINE UNDER 40 CFR PART 94, AND IS NOT SUBJECT TO THE EMISSION STANDARDS OF THAT PART. INSTALLATION OF THIS ENGINE IN ANY NONRECREATIONAL VESSEL IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

It should be noted that there is no prohibition against installing a certified commercial marine engine on a recreational vessel. In fact, we encourage recreational vessel manufacturers to use certified engines whenever possible due to the beneficial impact on the environment. There is also no prohibition on installing an old marine engine in an old vessel.

We are revising our definition of recreational marine engine, in response to comments, to bring it more in line with the Coast Guard approach contained in 46 U.S.C. 2101. Specifically, we are defining a recreational vessel as a vessel that is intended by the vessel manufacturer to be operated primarily for pleasure or leased, rented or chartered to another for the latter's pleasure. However, we continue to believe that it is necessary to put some boundaries on this definition, since certain vessels that are used for pleasure may have operating characteristics that are, in fact, similar to commercial marine vessels. For example, engines installed on excursion boats should be grouped with commercial marine engines because they are used much more intensely (more hours, higher load) than engines on a similar vessel operated exclusively for one's own pleasure. Therefore, we are drawing on the Coast Guard's definition of passenger vessel to further delineate what will be considered to be a recreational vessel. Specifically, vessels of less than 100 gross tons that carry more than six passengers will not be considered recreational vessels, and vessel of 100 gross tons or more that carry one or more passengers will not be considered recreational vessels. For the purpose of defining a recreational vessel, a passenger will have the same meaning as that in given by 46 U.S.C. 2101(21), which is generally a person that pays to be on the vessel. Finally, a vessel that is used solely for competition will not be considered a recreational vessel.

A vessel will be a considered a recreational vessel if the boat builder intends that the customer will operate the boat consistent with the recreational-vessel definition. Relying on the boat builder's intent is necessary since manufacturers need to establish a vessel's classification before it is sold, whereas the Coast Guard definitions apply at the time of use. The final definition therefore relies on the intent of the boat builder to establish that the vessel will be used consistent with the above criteria. If a boat builder manufactures a vessel for a customer who intends to use the vessel for recreational purposes, we will always consider that a recreational vessel regardless of how the owner (or a subsequent owners) actually uses it. To be able to verify that boat buyers don't abuse this provision, we would need to have some way of verifying the validity of the vessel manufacturer's original intent, for example, with written assurance from the buyer. We are not finalizing such a requirement in this final rule, but intend to address it when we propose emission standards for recreational marine engines.

F. Engine Dressing Exemption

Some companies produce marine engines by marinizing new, land-based engines and modifying them for installation on a marine vessel. This can be done in a way that does not affect emissions. For example, the modifications may consist of adding mounting hardware and a generator or reduction gears for propulsion. It can also involve installing a new marine cooling system that meets original manufacturer specifications and duplicates the cooling characteristics of the land-based engine, but with a different cooling medium (*i.e.,* water). This is similar to the process of buying certified land-based engines to make a generator or other equipment. This simplified approach of producing an engine can be described as dressing an engine for a particular application. Because the modified land-based engines are subsequently used on a marine vessel, however, these modified engines will be considered marine diesel engines, which then fall under the requirements in this final rule.

The final rule exempts engines from the marine certification requirements if the marinizing company meets the following conditions.

(i) The engine being dressed, (the ''base'' engine) must be a heavy-duty highway, land-based nonroad, or locomotive engine, certified pursuant to 40 CFR Part 86, 40 CFR Part 89, or 40 CFR Part 92. The base engine must be certified to the standards that apply at the time the base engine manufacturer completes assembly of the engine. We don't allow stockpiling of uncertified engines.

(ii) The dressing process must not involve any changes that can reasonably be expected to increase engine emissions. This includes a requirement that engine cooling and aftercooling systems stay within the ranges specified by the original engine manufacturer.

(iii) The original emissions-related label must remain on the engine.

(iv) The dressing company must report annually to us the models that are exempt under this provision.

(v) The engine model must not be primarily for marine application.

The goal of our engine dressing provisions is to eliminate the burden of certification and other compliance requirements where we have confidence that engines already certified to comparable standards from other programs will meet marine engine emission standards. Moreover, the certificate holder for the base engine continues to be liable, under the terms of the original certification, for the emissions performance of the dressed engine. We will nevertheless require, as we proposed, that a company certify dressed engines under 40 CFR Part 94 if the majority of engines produced are for marine application. This prevents a company taking advantage of the engine dressing exemption to produce marine diesel engines under, for example, a land-based nonroad diesel certificate, even though the engine might be used almost exclusively for marine application. Companies that produce engines qualifying for the engine dressing exemption will be exempt from the certification requirements and prohibited acts of 40 CFR Part 94. Minimal reporting and labeling requirements apply to these engines, as described below.

Companies that produce marine versions of their base engines may qualify for the engine dressing exemption if they meet the established criteria. Base engine manufacturers utilizing the dressing exemption must submit marine-specific emission data on their dressed marine engines. In addition, we may request marine-specific data from the original engine manufacturer if another company is dressing their engines for marine application. We would use this data for oversight to determine the validity of the exemption. Except for this testing responsibility, the discussion of engine dressing applies equally whether an original engine manufacturer or a post-manufacture marinizer produces the marine engine.

Heavy-duty highway engines are certified to a much different test cycle, which has in the past prevented us from accepting a highway engine certificate for nonroad applications for certification. Now that we are proposing to revise the standards and test procedures for these engines to control steady-state emissions, we can be more confident that they will adequately control emissions in a marine application. Thus, any certified heavy-duty highway, nonroad, or locomotive engine will be eligible for the dressing exemption.

Engine manufacturers might use averaging, banking, or trading to produce land-based engines that are certified with emission levels exceeding the comparable marine emission standard. These engines could not meet the proposed engine dressing criteria. Unlike an original engine manufacturer, a post-manufacture marinizer has no control over this. We have therefore simplified the criteria to say that any engine must be certified to land-based standards that apply to that engine at the time the dressing company buys the engine. This is true regardless of whether the original engine was certified using emission credits under the ABT program. Similarly, our NTE provisions do not apply to dressed engines, unless NTE provisions are in place for the certified base engine.

Engines that qualify as dressed engines are exempt from the marine emission standards. We therefore will not treat these as regulated marine engines. If we find that a company with an engine dressing exemption does not, in fact, meet the criteria spelled out in the regulations, the engines are not exempt and we may pursue enforcement for selling uncertified marine engines and/or tampering with certified engines.

We are including in the final rule a requirement that dressing companies put a label on each exempted engine stating the name of the dressing company and the fact that the engine was marinized without affecting emission controls. This will make clear that the engine is acceptable for use in a marine vessel. In addition, dressing companies will need to give us minimal notification that they are modifying certified engines. This can be done once annually for a company's whole range of dressed marine engines.

In addition to the labeling requirement, we encourage engine manufacturers to inform companies dressing their engines of these requirements. This will not only aid us in educating affected companies, it may help protect engine manufacturers from exposure to liability if their engines are ever found in a marine vessel without proper documentation.

G. Foreign-Trade Exemption

Oceangoing vessels with Category 3 propulsion engines typically have additional Category 1 and Category 2 engines onboard. We are adopting a provision that will allow owners of qualifying vessels to obtain an exemption from the national emission requirements for Category 1 and Category 2 engines that are installed on any U.S.-flagged vessel engaged in foreign trade or other overseas operation. We expect that ship owners will buy MARPOL-compliant engines because ships that travel to foreign ports will eventually need to demonstrate compliance with the Annex VI NO_X limits to get an International Air Pollution Prevention Certificate for their vessels. While the proposed regulation text inadvertently limited this to auxiliary engines, the exemption applies equally to propulsion engines that meet the criteria. This provision will allow all engines on qualifying vessels to meet solely the international requirements. This exemption will go into effect at the same time as the implementation of the domestic emission standards for these engines.

A vessel owner can obtain this exemption if it can be demonstrated to the Administrator's satisfaction that the vessel: (a) Will spend less than 25 percent of its total engine operation time within 320 nautical kilometers (200 nautical miles) of U.S. territory; or (b) will not operate between two United States ports, as evidenced by the vessel having solely a registry endorsement from the Coast Guard. The second qualifying criterion was described in the preamble to the proposed rule, but was inadvertantly omitted from the proposed regulation text. For installation of new or replacement engines on used vessels, the vessel's service record can be used to show where the vessel will be operated. For a new vessel, however, this determination must be made before it is placed into service, so it will not be possible to use the vessel's service record to make the determination described in (a). Instead, application to the Administrator for this exemption can rely on the vessel owner's business plans for the vessel, as well as on records from other vessels under the owner's control, any features of the vessel that will tend to limit its use within the specified area, or such other information as the Administrator shall request. Similarly, the determination described in (b) will rely on a good faith statement by the owner that the vessel is intended to hold only a registry endorsement. It should be noted, however, that if we learn that a vessel owner subsequently receives a coastwise or other registration that would allow the vessel to operate between two U.S. ports, we may review the validity of the exemption. This would also have a bearing on future requests for an exemption.

Category 1 and 2 engines that are exempt under this provision must be labeled to indicate that they have been certified only to the MARPOL Annex VI NO_X curve limits and that they are for use solely on vessels that meet the above criteria.

H. National Security Exemption

With regard to the national security exemption, we are applying an approach similar to that in our existing land-based nonroad and gasoline marine programs (40 CFR 89.908 and 40 CFR 91.1008). Under this exemption, only marine engines used in vessels that exhibit substantial features ordinarily associated with military combat, such as armor, permanently affixed weaponry, specialized electronic warfare systems, unique stealth performance requirements, and/or unique combat maneuverability requirements and which will be owned and/or used by an agency of the federal government with the responsibility for national defense, will be exempt from the regulations in this subpart for reasons of national security. No request for an exemption is necessary for these engines.

There may be situations in which an exemption from the emission controls is necessary for other vessels used for national security. Manufacturers may in these cases request a special national security exemption. A manufacturer will need to justify this request and get an agency of the federal government charged with responsibility for national defense to endorse it. We understand that the Navy, and all other branches of the government, will do their best to comply with the emission standards finalized in this final rule.

I. Competition Exemption

We are addressing competition engines, also referred to as racing engines, in two ways. First, engines produced by the manufacturer specifically for competition are exempt from the requirements of the rule. The Clean Air Act does not consider these to be nonroad engines, so none of the requirements of 40 CFR 94 apply, except for a requirement to label the engines. Manufacturers need only get our approval to sell engines under this exemption. Second, someone can modify a certified engine for competition purposes. Normally we would prohibit making such changes to certified engines under the anti-tampering provisions. The final rule, however, exempts these engines from the anti-tampering provisions for engines that are used "solely for competition."

Engines or vessels used for amateur or occasional competition do not meet the competition exemption criteria. Our review of a request from a manufacturer should prevent abuse of this provision for engines that are originally produced for competition. There is, however, no approval step for someone who modifies engines for competition, so we will more clearly spell out criteria indicating whether the engine will be used solely for competition. Specifically, owners meeting all the following criteria will qualify for the competition exemption:

—The engine and vessel are designed and built to be used solely for competition. For example, we would not expect engines used solely for competition to have a lifetime until rebuild greater than about 10 hours.

—The vessel is registered with a nationally recognized organization that sanctions professional competitive events.

In addition, once an engine is modified for competition, the engine is no longer certified to the requirements of 40 CFR 94 and must therefore not be used in an application where we would require a certified engine.

J. Other Exemptions

We are extending other nonroad exemptions to marine diesel engines. These include the testing exemption, the manufacturer-owned exemption, the display exemption, and the export exemption. Remember that these exemptions are not necessarily automatic, and that the engine or vessel manufacturer, or ultimate engine owner, may need to apply for them. As part of the approval, we may require labels on exempted engines.

III. Engine Categories

The engines that are the subject of this action are very diverse in terms of physical size, engine technology, control hardware, and costs associated with reducing emissions. These differences make it difficult to design one set of emission requirements for all marine diesel engines. For example, numerical emission limits that may be reasonable and feasible for a 37 kW engine used on an 5.5-meter (18-foot) boat may not be reasonable or feasible for a 1,500 kW engine installed on a tug or a 20,000 kW engine installed on an ocean-going container ship. Similarly, numerical emission limits appropriate for very large engines may be not be appropriately stringent for smaller engines, requiring little or no emission reduction.

Consequently, it is necessary to divide marine diesel engines into categories for the purposes of applying emission limits and duty cycles. We are adopting the categorization scheme summarized in Table 1. This relies predominantly on per-cylinder displacement to distinguish between categories of engines. This has the advantage that per-cylinder displacement is an engine characteristic that is not easily changed and is constant for a given engine model or series of engine models.

TABLE 1.—ENGINE CATEGORY DEFINITIONS

Category	Displacement per cylinder
1	disp. <5 liters (and power ≥37 kW).
2	5 ≤ disp. <30 liters.
3	disp. ≥30 liters.

We define Category 1 engines as those marine diesel engines that are rated above 37 kW and have a per-cylinder displacement of less than 5 liters. This definition groups together the class of marine engines that are serially produced and generally derived from land-based nonroad configurations or use the same emission control technologies. These engines are typically used as propulsion engines on relatively small commercial vessels (fishing vessels, tugboats, crewboats, *etc.*) They are also used as auxiliary engines on vessels of all sizes and applications. Category 2 engines are those marine diesel engines with per-cylinder displacement at or above 5 liters and up to 30 liters. These are the largest engines that are widely used as propulsion engines in harbor and coastal vessels in U.S. waters. These engines also provide auxiliary power on very large vessels. Many of these engines are of similar size and configuration as locomotive engines or use comparable emission control technologies. We define Category 3 engines as those marine diesel engines with a displacement at or above 30 liters per cylinder. These are very large high-power engines that are used almost exclusively for propulsion on vessels engaged in international trade.

We further divide Category 1 engines into several subgroups. These subgroups are similar to the land-based nonroad diesel engine subgroups, except that the subgroups are based on per-cylinder displacement rather than on engine power.

The final rule also divides Category 2 into subgroups, with gradually increasing emission standards for larger engines. Engines between 5 and 15 L/cyl are generally derived from locomotive engines and have corresponding emission standards. The current range of marine engine models over 15 L/cyl have design constraints that limit their ability to control emissions. Since engines under 15 L/cyl may not currently be capable of providing adequate propulsion power for all vessels in this size range, we believe the best approach is to accommodate the technology constraints of these engines by setting emission standards less stringent than for locomotive-derived engines. These standards reflect the reduced capability of controlling emissions from engines designed to operate on heavy fuel (and the need to reduce emissions from a higher baseline level).

Engines models between 15 and 20 L/cyl in particular are in a somewhat transitional category. These engines are sometimes used in harbor and inland river applications alongside locomotive-derived engines. Higher-power models are used in coastal and open-sea operations alongside engines with much larger per-cylinder displacement. The final rule separates engines between 15 and 20 L/cyl into two subgroups, those with a rated power less than 3300 kW and those with a rated power 3300 kW or greater. Locomotive engine manufacturers are developing new locomotive engines between 15 and 20 L/cyl (up to about 4500 kW), but it is not clear if these engines will be made available for marine application. In the Tier 2 time frame, we therefore believe it is appropriate to set emission standards based on what is achievable for the engines currently available. If it appears that these larger locomotive engines will become available as marine engines in the future, we would need to reconsider this approach to take into account the emission-control capabilities of these engines.

There are several marine engine models available worldwide with per-cylinder displacement between 20 and 30 liters. Very few of these engines are currently installed in vessels that are flagged and used in the United States. In the final rule we expand Category 2 to include engines up to 30 L/cyl. We subdivide the category with graduated emission standards for 20 to 25 L/cyl and 25 to 30 L/cyl engines reflecting the emission control capability of those engines. This should prevent high-emission engines from displacing smaller engines in common applications.

IV. Emission Standards and Related Provisions

This section describes the emission standards for commercial marine diesel engines at or above 37 kW. It also describes provisions that will ensure that engines comply with the emission limits across all engine speed and load combinations, throughout their useful life. We discuss in this section requirements related to test procedures, fuel specifications, certification, and compliance.

A. Standards and Dates

1. MARPOL Annex VI

MARPOL Annex VI specifies that any diesel engine over 130 kW installed on a vessel constructed on or after January 1, 2000 and to any engine that undergoes a major conversion after that date must comply with the Annex VI NO_X limits.[3] These NO_X requirements, listed in Table 2, are intended to apply to all vessels in a country's fleet. However, according to Regulation 13(1)(b)(ii) of the Annex, a country has the option of setting alternative NO_X control measures for engines on vessels that are not operated internationally. This final rule is intended to be an alternative NO_X control measure under the Annex for engines on US-flagged vessels that are not operated internationally.

In this final rule, we are not adopting the MARPOL Annex VI NO_X emission limits under U.S. law. However, we are encouraging engine manufacturers to make Annex VI compliant engines available and ship owners to purchase and install them on all vessels constructed on or after January 1, 2000. Because this voluntary emission control program is the first set of standards for marine diesel engines at or above 37 kW in the U.S., we sometimes refer to them as Tier 1 standards. We are also not finalizing emission limits for Category 3 engines in this rule, and the voluntary MARPOL Annex VI NO_X limits will be the sole emission control applicable to those engines.

To encourage vessel owners to purchase MARPOL Annex VI compliant engines prior to the date the Annex goes into force for the United States, we have developed a voluntary certification program that will allow engine manufacturers to obtain a Statement of Voluntary Compliance to the MARPOL Annex VI NO_X limits. Owners of vessels that are not operated internationally but that will be subject to the MARPOL survey requirements after Annex VI goes into effect for the United States should be aware that they may be required to demonstrate compliance with the Annex VI NO_X limits when they apply for their International Air Pollution Prevention (IAPP) certificate. Owners of vessels that are operated internationally may also be required to demonstrate compliance with the MARPOL limits after the Annex goes into effect, both because they will be required to have an IAPP and because they may be subject to port state controls. For all of these reasons, we expect ship owners to begin purchasing compliant engines for installation on ships constructed on or after January 1, 2000, and to bring engines into compliance when they undergo a major conversion after that date. Ship owners who fail to comply with the MARPOL VI NO_X requirements may face compliance and liability problems after U.S. ratification or the Annex goes into force internationally. Bringing engines into compliance at that time may involve retrofitting or replacing noncomplying engines. Ship owners may also be required to remove their vessels from service while these issues are resolved.

TABLE 2.—MARPOL ANNEX VI EMISSION LIMITS

Engine Speed, rpm	NO_X (g/kW-hr)
n <130	17.0
130 ≤ n <2000	$45.n^{(-0.2)}$
n ≥2000	9.8

This voluntary approach to the MARPOL Annex VI emission limits depends on the assumption that manufacturers will produce MARPOL-compliant engines before the emission limits go into effect internationally. Engine manufacturers can use the voluntary certification program mentioned above to obtain a Statement of Voluntary Compliance to the MARPOL NO_X limits. If, however, manufacturers continue to sell engines

[3] The Annex VI emission limits are not enforceable until the annex goes into effect: 12 months after it is ratified by 15 countries representing at least 50 percent of the gross tonnage of the world's merchant shipping.

with emissions above MARPOL levels or if the Annex is not ratified by the United States or does not go into effect internationally, we will revisit the need to adopt these emission limits under the Clean Air Act.

Finally, note that after the standards finalized in this final rule go into effect, engines meeting these national standards will also meet the less stringent MARPOL Annex VI NO_X limits and separate emission testing will not be required. However, engines intended for use on foreign-trade vessels or for sale in foreign countries will still be required to comply with the administrative, recordkeeping, and survey requirements that will be mandated when MARPOL Annex VI goes into force for the United States.

2. Tier 2

The Clean Air Act provides guidance for setting emission standards for nonroad engines in section 213(a)(3), instructing us to set standards that achieve the greatest degree of emission reduction achievable through the application of technology the Administrator determines will be available for the engines or vehicles to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology.

As described in the Final Regulatory Impact Assessment, manufacturers of marine diesel engines typically start with a partially or fully completed land-based nonroad diesel engine or, in some cases, a highway diesel engine, and adapt it for use in the marine environment. The emission standards that apply to land-based nonroad diesel engines therefore serve as the primary basis for the standards that apply to marine diesel engines. The land-based nonroad diesel engine standards in turn were designed to expand the use of highway engine technologies. The marine diesel new emission standards, and the underlying technology assumptions, are similarly derived from highway engine emission standards and technologies.

Table 3 contains the emission standards for commercial marine diesel engines at or above 37 kW. We are setting a standard of 7.2 g/kW-hr NO_X+HC for most Category 1 engines. For engines under 0.9 liters per cylinder, a 7.5 g/kW-hr applies to correspond with the standard for land-based nonroad engines. The PM standards vary by engine size, as shown in Table 3; these values generally match the limits that apply to the counterpart land-based engines. The CO emission standard is 5 g/kW-hr for all engines. New Category 1 engines under 0.9 liters per cylinder produced starting in 2005 must comply with these standards. For Category 1 engines over 2.5 liters per cylinder, the starting date is 2007. For the rest of Category 1, these standards apply to new engines produced beginning in 2004.

For Category 2 engines between 5 and 15 liters per cylinder, the NO_X+HC and PM standards are 7.8 g/kW-hr and 0.27 g/kW-hr, respectively. Bigger Category 2 engines are subject to graduated NO_X+HC standards and a PM standard of 0.5 g/kW-hr, as shown in Table 3. These standards apply to new engines produced beginning in 2007.

These dates refer to the point at which the manufacturer concludes the final assembly of the engine. This also applies to remanufactured and imported engines that qualify as new marine engines. In addition, an engine can become new without being manufactured, remanufactured, or imported, if it is an engine that has been placed into service in non-marine application before being installed on a vessel. In this case, these dates refer to the point at which the engine is installed on a vessel.

TABLE 3.—FINAL TIER 2 EMISSIONS STANDARDS AND DATES

Category	Displacement (liters/cylinder)	Starting Date	NO_X+THC (g/kW-hr)	PM (g/kW-hr)	CO (g/kW-hr)
1	power ≥37 kW disp. <0.9	2005	7.5	0.40	5.0
	0.9 ≤ disp. < 1.2	2004	7.2	0.30	5.0
	1.2 ≤ disp. < 2.5	2004	7.2	0.20	5.0
	2.5 ≤ disp. < 5.0	2007	7.2	0.20	5.0
2	5.0 ≤ disp. < 15.0	2007	7.8	0.27	5.0
	15.0 ≤ disp. < 20.0, and power < 3300 kW	2007	8.7	0.50	5.0
	15.0 ≤ disp. < 20.0, and power ≥3300 kW	2007	9.8	0.50	5.0
	20.0 ≤ disp. < 25.0	2007	9.8	0.50	5.0
	25.0 ≤ disp. < 30.0	2007	11.0	0.50	5.0

We are finalizing requirements to ensure that engines meet the emission standards during real-world operation, not only under laboratory testing (see Section IV.G.). Under these requirements, marine engines may not exceed the applicable emission standards by a fixed percentage while the engine is operated in any load/speed combination contained in specified not-to-exceed (NTE) zones.

B. Total Hydrocarbons

The emission standards specify total hydrocarbons (THC) rather than nonmethane hydrocarbons. Organic emissions are sometimes expressed as nonmethane hydrocarbons because methane is significantly less reactive than other hydrocarbons in the formation of ozone. However, for diesel engines, methane makes up only about two percent of the total hydrocarbons. In addition, HC generally makes up less than five percent of the combined HC+NO_X from diesel engines. The combination of these two factors makes the methane fraction a mathematically insignificant portion of the HC+NO_X emission standard.

C. Crankcase Emissions

We are requiring that all naturally aspirated marine diesel engines have closed crankcases, where blowby gases are routed into the engine intake air stream. For turbocharged engines, manufacturers may have a closed crankcase or route blowby gases directly to the atmosphere. If manufacturers do not have a closed crankcase, they must make it possible to readily route blowby gases into the exhaust stream or otherwise measure them for an in-use test. This approach is similar to the approach we adopted for locomotives. The purpose of this requirement is to provide manufacturers the incentive to reduce crankcase emissions to the maximum extent possible, or eliminate them altogether.

D. Smoke Requirements

We are not setting smoke requirements for marine diesel engines. Manufacturers have stated that many of these engines, though currently unregulated, are manufactured with smoke limiting controls at the request of the engine purchasers. Users seek low smoke emissions, both because they dislike the associated residue on decks and because they can be subject to penalties in ports that have smoke emission requirements. In many cases, marine engine exhaust gases are mixed with water prior to being released. This practice reduces the significance of smoke emissions, since smoke becomes significantly less visible when mixed with water. Moreover, we believe that the new PM standards will have the effect of further limiting smoke emissions.

E. Alternative Fuels

The new emission standards apply to marine diesel engines, without regard to the type of fuel they use. This is consistent with nonroad diesel engine regulations of 40 CFR Part 89. It is also generally consistent with the locomotive regulations; however, the locomotive regulations apply even more broadly because they also include spark-ignited engines. We are aware that there are currently very few alternative-fueled marine engines, but we believe that it is important to make clear to manufacturers what standards will apply if they produce these engines.

Heavy fuel (or residual fuel) is fundamentally different than the distillate fuel used for testing and most in-use operation. We therefore treat it as an alternative fuel. If manufacturers produce their engines with sufficient hardware to be capable of operating on heavy fuel, they should submit test data with their application for certification showing that they meet the emission standards using both distillate and heavy fuel. The Clean Air Act prohibits removing or rendering inoperative elements of design in regulated engines. If operators add fuel heating and filtering equipment and other hardware to make a certified engine capable of operating on heavy fuel, we would likely consider that to be making the emission control system inoperative. We are requiring a statement on the engine label for engines that can be modified to operate on heavy fuel to discourage operators from making this modification.

To properly address the range of possible alternative-fuel engines, it was necessary to modify the form of the HC standard. In the regulation of highway vehicles and engines, we determined that it is not appropriate to apply total hydrocarbon standards to engines fueled with natural gas, which is primarily methane (59 FR 48472, September 21, 1994). Rather, nonmethane hydrocarbon (NMHC) standards should apply to natural gas engines. We are therefore setting NMHC+NO_X standards for diesel-cycle marine engines that operate on natural gas. The same numerical standards apply to both types of engines. For example, an emission standard of 7.2 g/kW-hr THC+THC that applies to diesel-fueled engines becomes 7.2 g/kW-hr NMHC+NO_X for natural gas engines. Similarly, reported emissions from alcohol-fueled engines are on a basis of total HC-equivalent (THCE). THC-equivalent emissions are calculated from the oxygenated organic components and non-oxygenated organic components of the exhaust, summed together based on the amount of organic carbon present in the exhaust. Refer to the April 11, 1989 final rule for more information regarding the determination of HC-equivalence (54 FR 14426). These approaches will minimize variations in stringency for different fuel types.

F. Test Procedures

In this final rule we rely on previously established test procedures for land-based diesel engines. Specifically, we require that Category 1 marine engines be tested using the land-based nonroad procedures of 40 CFR Part 89, and that Category 2 marine engines be tested using the locomotive test procedures of 40 CFR Part 92. There are two reasons for using this approach. First, most manufacturers of marine diesel engines also manufacture land-based engines and will be equipped to test engines using these test procedures. Second, marine diesel engines are fundamentally similar to their land-based counterparts, and it is therefore appropriate to measure their emissions in the same way. In addition, the test procedures found in 40 CFR Parts 89 and 92 include flexibility for testing alternative-fuel engines. Some changes are nevertheless necessary. Manufacturers should be aware that the test procedures in MARPOL Annex VI are not equivalent to the test procedures described here and in § 94.103 and § 94.104. We are including the modifications to these test procedures as described below.

1. Duty Cycles

Testing an engine for emissions typically consists of exercising it over a prescribed duty cycle of speeds and loads, typically using an engine dynamometer. The duty cycle used to measure emissions for determining compliance with emission standards during the certification process is intended to represent operation in the field. The nature of that duty cycle is critical in evaluating the likely emissions performance of engines designed to those standards. To address operational differences between engines, we are specifying different duty cycles for different types of marine diesel propulsion engines. These are summarized here and described further in the Final RIA. Propulsion engines that operate on a fixed-pitch propeller curve must be certified using the International Standards Organization (ISO) E3 duty cycle. This is a four-mode steady-state cycle developed to represent in-use operation of commercial marine diesel engines. The four modes lie on an average propeller curve based on in-use measurements.

Fixed-speed marine propulsion engines with variable-pitch or electrically coupled propellers will be certified on the ISO E2 duty cycle. This duty cycle is also a four-mode steady-state cycle. It uses the same power and weighting factors as the E3 cycle, but the engine is operated in each mode at rated speed.

Constant-speed auxiliary engines must be certified to the ISO D2 duty cycle. Variable-speed auxiliary engines must be certified to the ISO C1 duty cycle. These duty cycles are consistent with the requirements for land-based nonroad diesel engines.

There is another class of propulsion engines that run at variable-speed and use a variable-pitched propeller. These engines are designed to operate near the power curve for the engine to maximize fuel efficiency. In general, these engines will operate at a constant speed near peak torque except when maneuvering in port, where they operate along the lug curve. Because of the expense of the system, variable-speed engines are rarely used with variable-pitched propellers. ISO does not have a test duty cycle specifically designed for these engines. While we proposed to use the E2 duty cycle for these engines, we have since learned the the in-use operation, especially in port areas, is best represented by the C1 duty cycle. This is consistent with MARPOL Annex VI.

For larger marine engines, conventional emission testing on a dynamometer becomes more difficult because of the size of the engine. Often engine mock ups are used for the development of these engines where a single block is used for many years and only the power assembly is changed out. For Category 2 engines, certification tests may be performed on these engine mock-ups, provided that their configuration is the same as that of the production engines. To obtain approval for single-cylinder testing the manufacturer must rely on the provision for special test procedures (40 CFR 94.207). This requires a demonstration ‘‘that it is equivalent to the specified procedures.’’ We will address the concern that single-cylinder testing may not be appropriate in some cases by evaluation of the individual situations under § 94.27.

2. In-Use Testing

Before manufacturers produce engines, they certify that their engines will meet all the standards that apply, including the standards based on testing with the specified duty cycles and based on the broader Not-to-Exceed standards, throughout the useful life of the engines. We are interested in testing in-use engines to confirm that they are emitting within these standards. For any in-use testing for purposes of section 207(c), we would depend on receiving the permission of the owner to conduct the testing on that vessel. We could do this testing one of two ways. First, we could remove the engine from the vessel and test it on a laboratory dynamometer, much like the manufacturer's certification testing. This would be the most direct way to determine if an engine continues to meet the certification standards after the engine has been installed on a vessel. However, the cost of removing and testing engines this way would be extremely high and a ship operator may be unwilling to allow us to remove the engine from service for emission testing.

Onboard testing is a second type of in-use emission measurement. Being able to conduct emission testing onboard the vessel can make in-use testing more accessible since onboard testing eliminates the need for engine removal and minimizes the disruption of normal vessel operations. The goal is for us to accurately assess the emission performance of these engines when they are in service. We may use onboard emission testing to identify and hold manufacturers responsible for noncompliance with the emission standards (including the Not-to-Exceed limits). The Clean Air Act authorizes us to pursue an emission-related recall if we determine that a substantial number of engines, when properly maintained and used, do not conform to the regulations throughout their useful life. Noncompliance relates to meeting the emissions levels under the associated test procedures, as defined in the regulations. For example, the test procedure for the NTE emission standard calls for nominally steady-state operation within a specified zone of engine operation. In-use testing results may provide credible and probative information relevant to making a determination of compliance. We also recognize that the level of accuracy and precision of in-use testing is one of the key factors to take into account when making any such evaluation or determination of compliance. We believe such systems and procedures would provide a significant benefit to both the agency and the industry.

For marine diesel engines that expel exhaust gases underwater or mix exhaust gases with water, we require that manufacturers equip the engines with an exhaust sample port, where a probe can be inserted for in-use emission tests. It is important that the location of this port allows a well mixed and representative sample of the exhaust. The purpose of this provision is to simplify in-use testing.

3. Test Fuel

The test procedure, including the test fuel, must adequately represent in-use operation to ensure achievement of emission reductions in use. To facilitate the testing process, we generally define a range of specifications for a test fuel that is intended to represent in-use fuels. Marine diesel engines need to comply with emission standards on any fuel falling within the range of the test fuel specifications, with one modification described below. This section describes the test fuel we are specifying for Category 1 and Category 2 engines (see also 40 CFR 94.108). This test fuel is for all testing associated with the standards in this final rule, including certification, production-line, in-use, and NTE testing.

We are applying the recently finalized test fuel specifications for land-based nonroad diesel engines to marine diesel engine testing, with a modification to the sulfur specification as described below. We believe that largely adopting the nonroad fuel will simplify development and certification burdens for marine engines that are developed from land-based counterparts. The test fuel for marine diesel engine testing has a sulfur specification range of 0.03 to 0.80 weight-percent (wt%), which covers the range of sulfur levels observed for most in-use fuels. Manufacturers are generally responsible for ensuring compliance with the emission standards using any fuel within this range. Thus, they will be able to harmonize their marine test fuel with U.S. highway (<0.05 wt%), nonroad (0.03 to 0.40 wt%), locomotive (0.2 to 0.4 wt%) and European testing (0.1 to 0.2 wt%). The full range of test fuel specifications are presented in Chapter 3 of the Final RIA.

We are setting a higher upper limit for the marine diesel engine sulfur specification (0.8 wt%) than was recently finalized for land-based nonroad engines (0.4 wt%), because there is some information available suggesting that marine fuels may have higher sulfur contents than land-based diesel fuels.[4] Using ASTM specification D 2069 as a guide, we considered choosing an upper limit of 1.5 wt% sulfur. However, we are setting an upper limit on sulfur content of 0.8 wt%, because the available data show that most in-use marine fuels have sulfur levels lower than this. Moreover, it is not clear that PM emission could accurately be measured using the specified testing procedures, or if the correction factor would be accurate, if fuels with a sulfur content higher than 0.8 wt% are used.[5]

We determined that the new PM standards are feasible based largely on the feasibility of the corresponding standards for land-based nonroad and locomotive applications, which have a 0.4 wt% sulfur upper limit for the test fuel. Since PM emissions are somewhat fuel sulfur-dependent, we do not believe it is appropriate to require compliance with the PM standards using fuel with a sulfur content above 0.4 wt%. We are therefore allowing a correction of PM emissions for testing with a fuel sulfur content greater than 0.4 wt%. Thus, the measured PM emissions for any test performed using fuel with a sulfur content of greater than 0.4 wt% may be corrected to the level that would have been measured if the fuel had a sulfur content of 0.4 wt%. This does not apply to systems using aftertreatment technologies, since the correction equation is not valid for those engines. This correction method is the same as that used for land-based nonroad engine testing to Tier 1 emission standards. Moreover, in the nonroad rulemaking, for engines rated over 37 kW certified to Tier 2 standards, we agreed to use only fuel with sulfur levels up to 0.2 wt% for our testing. Because Category 1 marine engines are mostly derived from land-based nonroad engines, we believe it is appropriate to extend this provision to Category 1 marine engines for the period during which they rely on land-based engines operating at Tier 2 emission

[4] ‘‘In-Use Marine Diesel Fuel,’’ Final Report by ICF Consulting Group for EPA, August 1999 (Docket A–97–50, document IV–A–4).

[5] ‘‘Exhaust Gas Emission Measurements: A Contribution to a Realistic Approach,’’ D. Bastenhof, dieselMAC, May, 1995.

levels. In the future effort to set marine Tier 3 emission levels, we will revisit the appropriate range of fuel properties for in-use testing in the context of the emission standards we set at that time.

4. Adjustable Parameters

Marine diesel engines are often designed with adjustable components to allow the engine to be adjusted for maximum efficiency when used in a particular application. This practice simplifies marine diesel engine production, since the same basic engine can be used in many applications. We recognize the need for this practice, but are also concerned about varying emission levels across the range of adjustment. We are therefore generally requiring that engines meet the emission standards when operated anywhere within the adjustable range (see 40 CFR 94.205). In most cases, this means engine manufacturers will be required to design their engines to prevent adjustments outside the specified range to ensure that engines are always operated within the specified range of adjustment. However, consistent with the approach used in the locomotive rule, we may allow manufacturers to specify in their applications for certification a narrower range of adjustment for these components across which the engine is certified to comply with the applicable emission standards, and demonstrate compliance across that range. For these engines, this allowance means that a manufacturer would specify a range of fuel injection timing, for example, over which the engine complies with the emission standards. This range could be designed to account for differences in fuel quality. Operators are then prohibited by the anti-tampering provisions from adjusting engines outside of this range.

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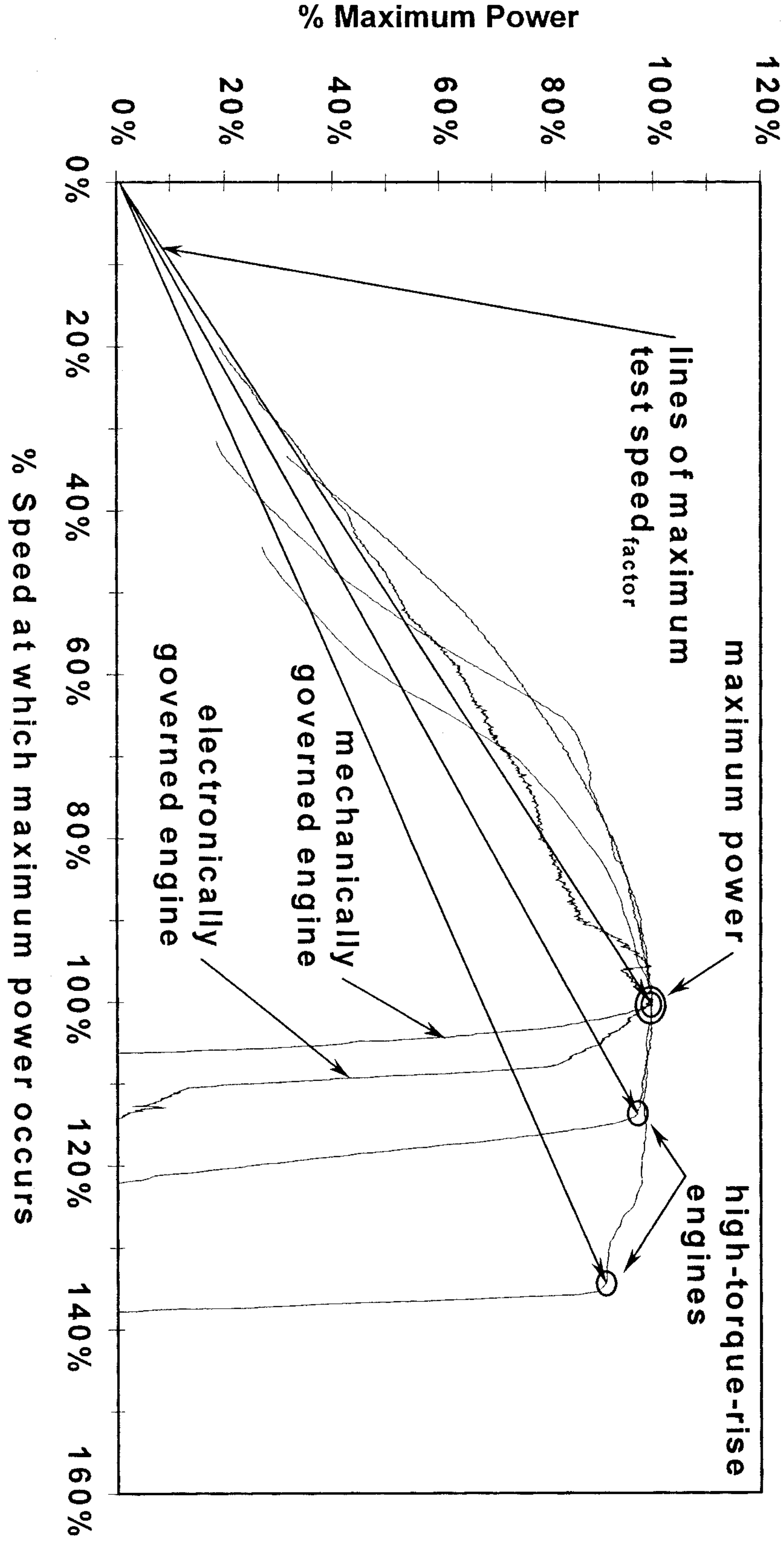

Figure 1: Example of normalized maximum-power versus speed curves. Maximum test speeds are circled.

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5. Determination of Maximum Test Speed

The determination of maximum test speed, where speed is the angular velocity of an engine's crankshaft (usually expressed in revolutions per minute, or rpm) is an important aspect of the duty cycles and ''not-to-exceed'' (NTE) zones described in this document (see also 40 CFR 94.107). We define the maximum test speed of an engine as the single point on an engine's maximum-power versus speed curve that lies farthest away from the zero-power, zero-speed point on a normalized maximum-power versus speed plot. In other words, consider straight lines drawn between the origin (speed = 0, load = 0) and each point on an engine's maximum-power versus speed curve (see Figure 1). Maximum test speed is defined as that point where the length of this line reaches its maximum value. Examples of results from this calculation are illustrated by circles superimposed on four maximum-power versus speed curves in Figure 1.

G. Not-to-Exceed Standards and Related Requirements

Our goal is for engines to control emissions over the broad range of in-use speed and load combinations that can occur on a vessel, achieving real-world emission reductions, rather than just controlling emissions under certain laboratory conditions. An important tool for achieving this goal is an in-use program with an objective standard and an easily implemented test procedure. Historically, we have taken the approach of setting a numerical standard on a specified test procedure and relying on the prohibition of defeat devices to ensure in-use control over a broad range of operation not included in the test procedure.[6]

No single test procedure can cover all real world applications, operations, or conditions. Yet to ensure that emission standards provide the intended benefits in use, we must have a reasonable expectation that emissions under real world conditions reflect those measured on the test procedure. The defeat device prohibition is designed to ensure that emissions controls are employed during real world operation and not just under laboratory or test procedure conditions. However, the defeat device prohibition is not a quantified standard and does not have an associated test procedure, so it does not have the clear objectivity and ready enforceability of a numerical standard and test procedure. As a result, the current focus on a standardized test procedure makes it harder to ensure that engines will operate with the same level of control in the real world as in the test cell.

Because the E3 duty cycle uses only four modes on an average propeller curve to characterize marine diesel engine operation, we are concerned that an engine designed to the duty cycle would not necessarily perform the same way over the range of speed and load combinations seen on a vessel. The E3 duty cycle is based on an average propeller curve, but a propulsion marine engine may never be fitted with an ''average propeller.'' For instance, a light vessel with a planing hull may operate at lower torques than average while the same engine operated on a heavy vessel with a deep displacement hull may operate at higher torques than average. This can largely be a function of how well the propeller is matched to the engine and vessel. A planing hull vessel can operate at high torques at low speed prior to planing.

To ensure that emissions from propulsion engines are controlled over the full range of speed and load combinations seen on vessels, we are establishing a zone under the engine's power curve where the engine may not exceed a specified emission standard, for any of the regulated pollutants, under the kind of operation that could reasonably be expected to be seen in the real world. In addition, the whole range of real ambient conditions is included in this ''not-to-exceed'' (NTE) zone testing. The NTE zone, limit, and ambient conditions are described below.

At the time of certification, manufacturers would have to submit a statement that its engines will comply with these requirements under all conditions that may reasonably be expected to occur in normal vehicle operation and use. The manufacturer must provide a detailed description of all testing, engineering analysis, and other information that forms the basis for the statement. This certification statement must be based on testing and/or research reasonably necessary to support such a statement and on good engineering judgment. This supporting information would have to be submitted to us at certification if we request it; manufacturers would not necessarily be required to submit NTE test data for compliance during certification.

We believe there are significant advantages to taking this sort of approach. The test procedure is very flexible so it can represent many in-use speed and load combinations and ambient conditions. Therefore, the NTE approach takes all of the benefits of a numerical standard and test procedure and expands it to cover a broad range of conditions. Also, laboratory testing makes it harder to perform in-use testing since either the engines would have to be removed from the vessel or care would have to be taken that laboratory-type conditions can be achieved on the vessel. With the NTE approach, in-use testing and compliance become much easier since emissions may be sampled during normal vessel use. Because this approach is objective, it makes enforcement easier and provides more certainty to the industry of what is expected in use versus over a fixed laboratory test procedure.

Even with the NTE requirements, we believe it is still important to retain standards based on the steady-state duty cycles. This is the standard that we expect the certified engines to meet on average in use. The NTE testing is more focused on maximum emissions for segments of operation and should not require additional technology beyond what is used to meet the new emission standards. We believe that basing the emissions standards on a distinct cycle and using the NTE zone to ensure in-use control creates a comprehensive program. In addition, the steady-state duty cycles give a basis for calculating credits for use in the averaging, banking, and trading program.

The NTE zone for marine diesel engines certified with the E3 duty cycle is illustrated in Figure 2 and is defined by the power curve of the engine up to rated speed. This zone is based on the range of conditions that a marine diesel propulsion engine typically experiences in use. For variable-speed engines with variable-pitch propellers certified to the C1 duty cycle, this zone is extended to include all torque points between the E3 power curve (between 63 percent and 100 percent speed) and the lug curve. These NTE zones are divided into two subzones above and below 45% of power at maximum test speed.

[6] EPA letter from Jane Armstrong and Bruce Buckheit, October 15, 1998.

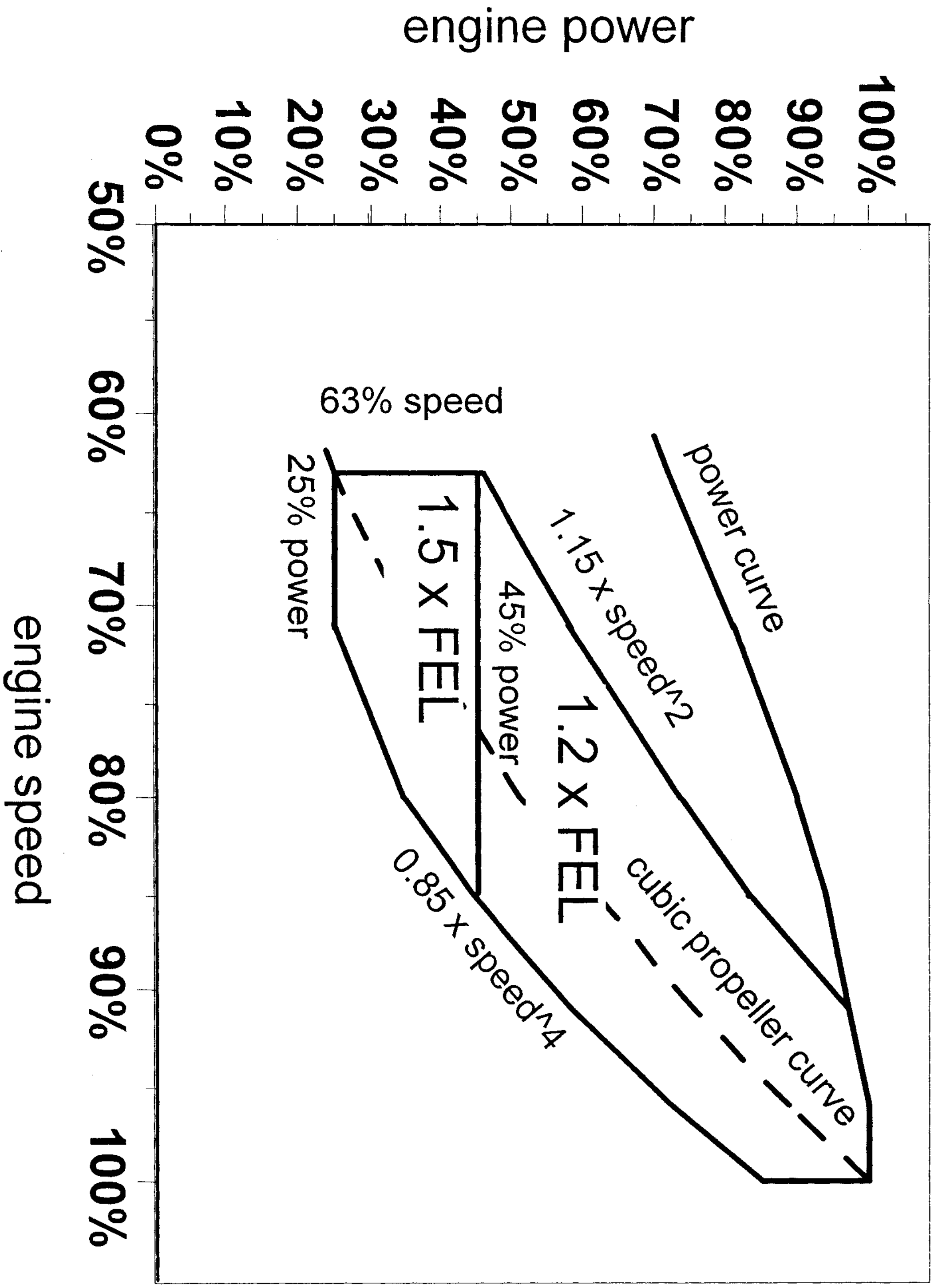

Figure 2: Not-to-Exceed Zone for E3 Engines

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We are requiring a similar approach for engines certified using the constant-speed E2 duty cycle. In this case, the ''not-to-exceed'' zone is at the speed for which the engine is designed to operate for loads ranging from 25 to 100 percent of maximum load at that speed. Because a constant speed can actually operate over a small range of engine speeds in-use, the NTE zone includes this small range of speeds. This zone is also split into subzones above and below 45% of maximum power. More detail on the development of the boundaries and conditions associated with the NTE zones may be found in Chapter 3 of the Final RIA.

We are requiring emissions caps for the NTE zones that represent a multiplier times the weighted test result used for certification for all of the regulated pollutants (HC+NO_X, CO, and PM). This is consistent with the concept of a weighted modal emission test such as the steady-state tests included in this rule. The standard itself is intended to represent the average emissions under steady-state conditions. Since it is an average, some points can be higher, some lower, and the manufacturer will design to maximize performance and still meet the engine standard. The NTE limit is on top of this. It is designed to make sure that no part of the engine operation and that no application goes too far from the average level of control.

For propulsion engines certified to the E3, C1, and E2 duty cycles, we believe that a not-to-exceed limit of 1.2 times the emissions standard (or FEL) is appropriate for the subzone at or above 45% of maximum test power. Below 45% of maximum test power, the cap is 1.5. Data presented in Chapter 3 of the Final RIA show that these limits are feasible for marine diesel engines, yet challenging because of variations in emissions at high versus low speeds and loads for some engines. This data show that the 1.2 cap is easily achievable at higher power, but may be more challenging at low powers. We set the cap at 1.5 below 45% of maximum test power for this reason. These subzones and caps apply equally to the Tier 2 emission standards for each regulated pollutant. Manufacturers may alternatively choose to comply with a cap of 1.25 over the whole zone, as we originally proposed. In any future tier of standards, we will review the appropriateness of tailoring the NTE approach to the unique characteristics of the individual exhaust constituents.

When testing the engine within the NTE zone, only nominally steady-state operation will be considered. It is unlikely that transient operation is necessary under the NTE provisions to ensure that emissions reductions are achieved for commercial marine diesel engines. We designed the NTE zones to contain the operation near an assumed propeller curve that the steady-state cycles are intended to represent. We believe that the large majority of commercial marine operation in the NTE zone is steady-state. For planing vessels, we believe the transient operation as a vessel comes to plane generally is along the torque curve and would not be within the NTE zone. However, we don't have enough data to reliably say where under the torque curve marine engines operate during transient operation. Also, we do not believe the NTE zone should include areas where an engine may operate during transients but not in steady-state modes. We therefore don't believe that adding transient operation to the NTE requirements is necessary at this time. This would change if we saw evidence that in-use emissions increase due to insufficient emission control under transient operation.

The NTE standards apply under any ambient air conditions. Within the following air temperature and humidity ranges, no corrections will be allowed to account for the effects of temperature or humidity on emissions: 13–30°C for ambient air temperature and 7.1–10.7 grams water per kilogram of dry air for humidity. For engines drawing intake air from an enclosed engine room, however, the high end of the air temperature range is 35°C (measured as intake air temperature). Ambient water temperature must be in the range of 5–27°C during NTE testing. In addition, the engines must comply with the standards for the full range of test fuel specifications. These ranges for ambient conditions are discussed in more detail in Chapter 3 of the Final RIA.

The defeat device provisions established for highway and nonroad engines apply to marine diesel engines in addition to the NTE requirements. A design in which an engine met the standard at the steady-state test points but was intentionally designed to approach the NTE limit everywhere else would be considered to be defeating the standard, except under limited circumstances discussed below. Electronic controls that recognize when the engine is being tested for emissions and adjust the emissions from the engine would be another example of a defeat device, regardless of the emissions performance of the engine.

We are aware that marine diesel engines may not be able to meet the emissions limit under all conditions. Specifically, there are times when emission control must be compromised for startability or safety. We have excluded engine starting from NTE testing. In addition, our defeat device provisions accommodate the manufacturers potential need to allow emissions to increase to the extent necessary to protect the engine, such as responding to engine overheating.

Manufacturers may ask us to approve an adjusted size or shape of the NTE zone for certain engines if they can show us that the engines will only operate within the revised NTE zone in normal use. This way, manufacturers can avoid testing their engines under operation they would rarely experience in a vessel. However, manufacturers are still responsible for any engine operation seen in normal use. They are also responsible for ensuring that their specified operation is indicative of real-world operation. In addition, if a manufacturer designs an engine for operation at speeds and loads outside of the NTE zone, the manufacturer is responsible for notifying us so their NTE zone can be modified appropriately to include this operation.

We are not in this final rule setting an NTE limit for auxiliary marine engines. We do not yet have enough data on the operating characteristics of auxiliary engines to determine NTE zones and the associated limits for these engines. We expect to pursue similar requirements for land-based nonroad diesel engines. If we adopt NTE requirements for land-based nonroad diesel engines, we expect to extend those provisions to marine auxiliary engines at the same time.

The NTE provisions will go into effect in the 2010 model year for post-manufacture marinizers and in the 2007 model year for other manufacturers for all commercial marine diesel engines. Manufacturers have agreed to collect and show us data on their engines operating in the NTE zone before the NTE standards take effect. We may also choose to require them to give us this data under § 208 of the Clean Air Act. This delay in implementation of the NTE provisions for most Category 1 engines will provide reasonable lead time by allowing more time to collect data and assess engine operation in the NTE zone. For larger engines, the early banking program will provide manufacturers with an incentive to produce low-emission engines prior to 2007. This way, if these manufacturers chose to stagger their product line and produce low emission engines early, they will be able to add NTE-type testing to the testing they perform while calibrating their engines.

H. Voluntary Low-Emitting Engine Program

In the final rule for land-based nonroad diesel engines, we included a program of voluntary standards for low-emitting engines, referring to these as ‘‘Blue Sky Series’’ engines (63 FR 56967, October 23, 1998). We are setting similar voluntary standards as part of this rulemaking. The program, if successful, will lead to the introduction and more widespread use of these low-emission technologies. The qualifying emission levels are listed in Table 4. The voluntary standards for the expanded subcategories above 15 L/cyl all follow the pattern of a 40 percent reduction relative to the mandatory standards. While the Blue Sky Series emission limits are voluntary, a manufacturer choosing to certify an engine under this program must meet all the provisions established to demonstrate compliance with these limits, including allowable maintenance, warranty, useful life, rebuild, and deterioration factor provisions.

TABLE 4.—VOLUNTARY EMISSION STANDARDS (G/KW-HR)

Engine size	$HC+NO_X$	PM
Power ≥37 kW, and displ.<0.9 L	4.0	0.24
0.9 L ≤displ.<1.2 L	4.0	0.18
1.2 L ≤displ.<2.5 L	4.0	0.12
2.5 L ≤displ.<5 L	5.0	0.12
5.0 L ≤displ.<15.0 L	5.0	0.16
15.0 L ≤disp. <20.0 L, and power <3300 kW	5.2	0.30
15.0 L ≤disp. <20.0 L, and power ≥3300 kW	5.9	0.30
20.0 L ≤disp. <25.0 L	5.9	0.30
25.0 L ≤disp. <30.0 L	6.6	0.30

The Blue Sky Series program begins immediately upon publication of this final rule and continues through the 2010 model year. We intend to evaluate the program to determine if it should be continued for 2011 and later engines, and if so, whether any changes are needed.

Creating a program of voluntary standards for low-emitting engines, including testing and durability provisions to help ensure adequate in-use performance, will be a major step forward in advancing innovative emission control technologies, because EPA certification will provide protection against false claims of environmentally beneficial products. For the program to be most effective, however, incentives for the production of these engines must be created as well.

We are concerned that such incentive programs not lead to a net detriment to the environment through the double-counting of benefits. We have therefore concluded that manufacturers choosing to sell an engine with the Blue Sky Series designation should not generate averaging, banking, and trading credits for demonstrating compliance with EPA programs. Other groups are free to design credit programs without concern for any double-counting or other unintended effect of overlapping programs.

In addition to credit-based programs, we see substantial potential for users and state and local governments to establish incentive programs. For example, state or local governments or individual ports may be able to add incentives for introducing low-emitting engine technologies in harbor and other coastal vessels.

I. Durability

As directed by the Clean Air Act, we are requiring that manufacturers design and build engines with durable emission controls. This means that manufacturers are responsible for the emission results for the engines they produce throughout their useful life.[7] We are also establishing provisions to ensure proper maintenance and repair of engines throughout their lifetime. The durability provisions, described below, are intended to ensure that engines continue to meet the applicable standards in use. The specific areas of the durability program focused on here are useful life, warranty periods, deterioration factors, and rebuilding requirements. Most of these provisions are carried over from the land-based or locomotive programs.

1. Useful Life

Useful life is the period during which the marine engine is required to meet the emission standards. For Category 1 engines, we are setting a minimum useful life of 10 years or 10,000 hours of operation. Specifically, the 10,000-hour requirement is based on an expected five-year period until the first time the engine is rebuilt, and an expected usage rate of 2,000 hours per year. For Category 2 engines, we are setting a minimum useful life of 10 years or 20,000 hours of operation. In this case, the 20,000-hour requirement for marine engines is calculated based on an operating rate of 4,000 hours of use per year, with five years between rebuilds. The useful life figures are minimum values to take into account the possibility that manufacturers may in the future design their engines for a longer period of operation before rebuilding. If an engine is designed to be in service until rebuild longer than our minimum useful life period, then the manufacturer must specify a corresponding longer useful life for that engine family.

The above approach of basing useful life on time to first rebuild was chosen because it is difficult to justify holding the engine manufacturer responsible for an engine’s emissions after the engine is rebuilt. The original engine manufacturer has little, if any, control over the rebuild process. When done improperly, the rebuilding process can include changes to the engine that adversely affect emissions. At the same time, however, these engines are often kept in service much longer than the minimum useful life. Median values for service lives are 15 years for Category 1 propulsion engines and 23 years for Category 2 engines. These longer service lives mean that the engine may be exempt from in-use testing for more than half its service life. We therefore believe it is important to be able to conduct recall testing on these engines throughout the established useful life period. We are also establishing requirements for engine rebuilders.

To address the possibility of light commercial applications with much shorter design lifetimes, the final rule allows manufacturers to request a

[7] This is different from the approach used in MARPOL Annex VI, according to which manufacturers must ensure their engines meet the emission limits at the time of certification but ship owners become responsible for their continued compliance with the limits. Under that program, compliance is verified during flag-state and port-state inspections.

shorter useful life for certain engines. Manufacturers in this case need to determine the alternate useful life based on the documented hourly service life of these engines in the field. This may in some cases be much less than 10,000 hours of operation. To prevent abuse of this provision, we won't approve any useful life less than 1,000 hours and we will require that the manufacturer display the certified useful life on the engine label. Also, the shortened useful life may not be less the manufacturer's recommended overhaul interval or mechanical warranty for that engine.

2. Warranty Periods

Tied to the useful life is the minimum warranty period imposed under the Clean Air Act. The warranty periods for marine diesel engines are based on the ratio of useful life and warranty periods established for land-based nonroad engines. Specifically, we are setting a warranty period that is 50 percent as long as the useful life (in both operating hours and years) for both Category 1 and Category 2 engines. Also, the emissions warranty may not be less than any mechanical warranties offered by the manufacturer. This applies whether the mechanical warranty is published or negotiated, and whether it is offered for a fee or at no extra charge. Table 5 summarizes the useful life and warranty values that apply.

We are also including defect reporting requirements in the final rule. We require engine manufacturers to tell us whenever they identify a specific emission-related defect in 25 or more Category 1 engines, consistent with the provisions that apply to highway and land-based nonroad engines. Similarly, we require notification for specific emission-related defects in 10 or more Category 2 engines, which is the same threshold that applies to locomotives. This is not limited to a single engine model or model year.

TABLE 5.—USEFUL LIFE AND WARRANTY PERIODS

Category	Useful Life		Warranty Period	
	Hours of operation	Years	Hours of operation	Years
Category 1	10,000	10	5,000	5
Category 2	20,000	10	10,000	5

3. Deterioration Factors

To further ensure that the emission standards are met in use, we require the application of a deterioration factor (DeF) in evaluating emission control performance during the certification and production-line testing process. The emissions from new engines are adjusted using the DF to account for the expected deterioration in emissions over the life of the engine due to wear and aging of the engine and emission controls. The resulting emission level (*i.e.,* the final deteriorated emission level) represents the expected emissions at the end of the useful life period. New emission control technologies such as aftertreatment, sophisticated fuel delivery controls, and some cooling systems, may lose some of their effectiveness as they age. DFs are already required for highway vehicles and engines, land-based nonroad engines, and locomotives. We are extending this approach to marine diesel engines.

Marine diesel engine DFs will be determined by the engine manufacturers in accordance with good engineering practices. Consistent with the land-based nonroad and locomotive programs, we are not specifying a detailed procedure. In generating DFs, however, manufacturers must observe some general guidelines and get our approval. In particular, the DF must be consistent with emissions increases observed in-use based on emission testing of similar engines. Additionally, the DF should be calculated for the worst-case engine calibration offered within the engine family.[8] DFs must be calculated as an additive value (*i.e.,* the arithmetic difference between emission level at full useful life and the emission level at the test point) for engines without exhaust aftertreatment devices. In contrast, DFs must be calculated as a multiplicative value (*i.e.,* the ratio of the emission level at full useful life to the emission level at the test point) for engines using exhaust aftertreatment devices. This is consistent with the DF requirements applicable to other diesel engines, based on observed patterns of emission deterioration.

It is not our intent to require a great deal of data gathering on engines that use established technology for which the manufacturers have the experience to develop appropriate DFs. New DF testing may not be needed where sufficient data already exists. However, we are applying the DF requirement to all engines to be sure that manufacturers are using reasonable methods to ascertain the capability of engines to meet standards throughout their useful lives. Consistent with the land-based engine programs, we will allow marine diesel engine manufacturers the flexibility of using carryover and carryacross of durability emission data from a single engine that has been certified to the same or more stringent standard for which all of the data applicable for certification has been submitted. In addition, we are allowing deterioration data from highway or land-based nonroad engines to be used for similar marine diesel engines.

Service accumulation is necessary to generate DFs from engines in the laboratory. Consistent with the land-based nonroad rule, we are specifying minimum allowable maintenance intervals for marine diesel engine service accumulation to ensure that durability data represent in-use performance (see 40 CFR 94.211(e)). These minimum intervals for marine diesel engines are equivalent to those required for nonroad and highway diesel engines (40 CFR 89.109; 40 CFR 86.094–25). For Category 2 engines, we will allow engine manufacturers to request alternate minimum maintenance intervals at the time of certification, subject to our approval. This allowance for Category 2 engines is necessary to allow harmonization with locomotive maintenance practices (63 FR 18978, April 16, 1998).

4. Rebuilt Engines

It is common for marine diesel engines to be rebuilt several times during the course of their lifetimes. Similar to land-based nonroad engines, we have two concerns regarding the rebuilding of marine diesel engines. First, there may not be an incentive to check and repair emission controls that do not affect engine performance. Second, there may be an incentive to rebuild engines to an older

[8] The worst case would be the engine calibration expected to generate the highest level of emission deterioration over the useful life, using good engineering judgement.

configuration due to real or perceived performance penalties associated with technologies used to meet the new emission standards. Such practices would likely result in increased emissions. To address these concerns, we are extending the land-based nonroad rebuild requirements to marine diesel engines. Under these requirements, the parties involved in the process of rebuilding or remanufacturing engines must follow specific provisions to avoid tampering with the engine and emission controls. This requirement is based on the statutory prohibition against tampering with regulated engines. The rebuild requirements apply to any engine built on or after the date that new emission standards apply to that engine's specific category or group, regardless of the emission levels that the individual engine is designed to achieve.

Anyone who rebuilds engines, in whole or part, and fails to comply with these provisions may be liable for tampering. Individuals or companies are responsible for the activities over which they have control. Therefore, there may be more than one responsible party for a single engine in cases where different parties perform different tasks during the engine rebuilding process (e.g., engine rebuild, full engine assembly, installation). We are not including any certification or in-use emissions requirements for the rebuilder or engine owner.

We are adopting modest record keeping requirements that should be in line with customary business practices. People involved in the process of marine diesel engine rebuilding or remanufacturing will keep the records. The required records include the hours of use accumulated on the engine at the time of rebuild and a list of the work performed on the engine or related systems. For work performed on the engine, rebuilders must include a list of replacement parts used, engine parameter adjustments, design element changes, and a description of any work performed. Parties must keep the information for two years and may use any format or system, provided that the information can be readily understood by an EPA enforcement officer. We do not require that companies keep information that is not reasonably available through normal business practices. In cases where it is customary practice to keep records for engine families rather than specific engines, where the engines within that family are being rebuilt or remanufactured to an identical configuration, such record keeping practices are satisfactory. Rebuilders may use records such as build lists, parts lists, and engineering parameters that they keep of the engine families being rebuilt rather than on individual engines, provided that each engine is rebuilt in the same way to those specifications.

5. Replacement Engines

There may be situations in which a marine diesel engine can or must be replaced with a new engine. In general, we require that these replacement engines meet the certification requirements that apply to new engines for the year it is manufactured. The final rule makes provision for engine manufacturers to produce new engines to replace an older, uncertified model, where the replacement engine doesn't need to comply with the emission standards that would otherwise apply to new engines. This exemption for replacement engines is available if no new, compliant engine is available that meets the physical and performance characteristics of the engine being replaced (subject to our approval). There is no exemption for engines that are replacing certified engines. Consistent with replacement engine provisions in other programs, some additional constraints ensure that companies do not circumvent the regulations.

J. Certification

As discussed previously, we expect technology to be shared between land-based engines and marine engines. Some engine manufacturers will likely produce engines of the same basic design for sale in both areas. Specifically, we expect Category 1 marine engines to share the technology developed for land-based nonroad engines, and Category 2 engines to share technology developed for locomotive engines. To account for this product overlap, we are basing certification data and administration requirements for Category 1 on the existing program for land-based nonroad engines, and for Category 2 marine engines on the existing program for locomotive engines.[9] Specific certification provisions are discussed more fully in the following sections.

1. Engine Family Definition

Engine grouping for the purpose of certification is accomplished through the application of an ''engine family'' definition. Engines expected to have similar emission characteristics throughout the useful life are classified in the same engine family. Separate engine family classification is also required for each marine engine category (*i.e.*, Categories 1, 2, and 3 will be in separate engine families). We are establishing specific parameters to define engine family for each category of marine engine. To provide for administrative flexibility, we may separate engines normally grouped together or to combine engines normally grouped separately based upon a manufacturer's request substantiated with an evaluation of emission characteristics over the engine's useful life.

For Category 1, we are using the engine family definition for land-based nonroad engines, with the addition of the type of fuel system and whether fuel injection is controlled mechanically or electronically. For Category 2, we are using the engine family definition for locomotive engines.

These definitions provide consistency between land-based and marine engines of the same basic type. The fuel system type and control type were added to the land-based nonroad engine family definition to reduce the variability of emissions within an engine family. This change will aid manufacturers in selecting the ''worst-case'' engine for emission testing. It will lessen the chance of noncompliance in use by ensuring that the highest emitting engine is tested during certification.

Under the provisions of the land-based nonroad rule, engine manufacturers have the option to petition for their marine engines to be included in land-based engine families. We are not including this flexibility for marine engines rated over 37 kW because the ''not-to-exceed'' provisions in this final rule apply uniquely to marine engines. We do, however, allow manufacturers to rely on the land-based certification for land-based engines that are marinized without affecting emissions (see Section II.F.).

The engine family definition is fundamental to the certification process and to a large degree determines the amount of testing required for certification. Manufacturers are required to estimate the rate of deterioration for each engine family (see Section IV.I.3. for further details). Compliance with the emission standard will also be demonstrated for each engine family based upon required testing and the application of the deterioration factor. Separate certificates of conformity are required for each engine family.

2. Emission Data Engine Selection

Manufacturers must select the highest emitting engine (*i.e.,* ''worst-case'' engine) in a family for certification

[9] See 40 CFR part 89, subpart B, for the provisions of the land-based nonroad engine program and 40 CFR part 92, subpart C, for the provisions of the locomotive program.

testing. In making that determination, the manufacturer must use good engineering judgement (considering, for example, all engine configurations and power ratings within the engine family and the range of installation options allowed). By requiring manufacturers to test the worst-case engine, we can be sure that all engines within the engine family are complying with emission standards for the least cost (as measured by the number of tests required). Manufacturers may request the separation of the dissimilar calibrations into separate engine families. This may be appropriate, for example, if a manufacturer feels that an engine family is grouped too broadly or that the worst-case emission data engine underestimates the emission credits available under the ABT provisions.

K. Production-Line Testing

One of the challenges of serial engine production is ensuring that each engine produced has the same emission characteristics as the original certification engine. We are finalizing a requirement for manufacturers to conduct production line testing (PLT). The general object of a PLT program is to show, with reasonable certainty, whether certification designs have been translated into production engines that meet applicable standards (or FELs) at the time of production, before excess emissions are generated in use. PLT is performed on a regular basis during the year by the engine manufacturer according to our criteria.

With PLT testing, a manufacturer selects engines from its production line for confirmatory testing. In general, a manufacturer must test one percent of its total projected annual U.S. marine diesel engine sales (propulsion and auxiliary) for each category each year. We believe that a one percent sampling rate is appropriate for the marine diesel engine industry because of its low production volumes, and that a higher sampling rate would be overly burdensome for this industry. We are not specifying a minimum number of tests for Category 1 engines. If a manufacturer sells fewer than 100 Category units in the United States in a given year, it is not required to do any PLT testing for those engines that year. For Category 2 engines, a manufacturer must conduct a minimum of one PLT test per year. Thus, for manufacturers with sales of less than 100 Category 2 engines in a given year, one test is required that year. For purposes of calculating the number of tests required, Category 1 and Category 2 annual engine sales must be considered separately.

The manufacturer selects a random sample of test engines that is representative of annual production. We reserve the right to reject any engines selected by manufacturers if we determine that such engines do not represent production engines. Engines selected should cover the broadest range of production possible, and from year to year should be varied to cover all engine families if possible. Tests should also be distributed evenly throughout the model year, to the extent possible.

Manufacturers must conduct emission testing of PLT engines in accordance with the applicable federal testing procedures. Compliance with the NTE provisions must be demonstrated as part of PLT testing. The results must be communicated to us in periodic reports that summarize emissions results, test procedures, and events such as the date, time, and location of each test. These reports allow us to continually monitor the PLT data. Reports must be submitted each quarter. If no testing is performed during the period, no report is required.

Under this testing scheme, if an engine fails a production line test, the manufacturer must test two additional engines out of either the next two days' production or the next fifteen engines produced in that engine family in accordance with the applicable federal testing procedures. This dual approach to testing additional engines accounts for variations in production volumes. If production volumes are high, then we believe the two-day provision will allow for the orderly selection of additional test engines. Likewise, if production volumes are low, then the provision allowing the engines to be selected from the next fifteen produced will allow for orderly selection. When the average of the three test results, for any pollutant, are greater than the applicable standard or FEL for any pollutant, the manufacturer fails the PLT for that engine family. Such failures must be reported to us within two working days of the determination of a failure. Note that compliance with the standards is required of every covered engine. Thus, every engine failing a PLT test is considered noncompliant with the standards and must be brought into compliance. Using the average of three tests to determine compliance with the PLT program serves only as a tool to decide when it is appropriate to suspend or revoke the certificate of conformity for that engine family, and is not meant to imply that not all engines have to comply with the standards.

In the PLT program, the Administrator can suspend or revoke the manufacturer's certificate of conformity, in whole or in part, thirty days after we determine that an engine family is noncompliant, or if the engine manufacturer's report reveals that the PLT tests were not performed correctly. During the thirty-day period after we establish noncompliance, we will coordinate with the manufacturer to facilitate the approval of the required production line remedy to eliminate the need to halt production as much as possible. The manufacturer must then address the noncompliance for the engines produced prior to the suspension or revocation of the certificate of conformity (for example, by bringing them into compliance or removing them from service). We can reinstate the certificate after a suspension, or reissue one after a revocation, if the manufacturer demonstrates through its PLT program that improvements, modifications, or replacements have brought the engine family into compliance. The regulations include hearing provisions that provide a mechanism to resolve disputes between manufacturers and us regarding a suspension or revocation decision based on noncompliance with the PLT. It is important to point out that we retain the legal authority to inspect and test engines if problems arise in the PLT program. Note also that the definition of ''failure'' of the PLT is limited to the PLT program, and does not define failure or noncompliance for other purposes. It is based in part on the severity of the result of a failure (suspension or revocation of a certificate) and is not meant to limit in any way the overall obligation of the manufacturer to produce engines that meet the standard.

We recognize the need for a PLT program that does not impose an unreasonable burden on manufacturers. Therefore, consistent with the requirement that testing be required on one percent of total marine diesel engine production for each category, no PLT is required for manufacturers whose Category 1 marine diesel engines sales are less than 100 per year. This is because companies with such low sales are unlikely to have in-house testing facilities, and requiring such companies to send an engine to an independent test facility for PLT purposes may be too burdensome. Note that companies exempt from the PLT program are not exempt from other certification and compliance provisions. Engines exempt from the PLT program must still meet the emission limits as produced and in use. We reserve the right to conduct an SEA on any manufacturer with engines certified to the requirements of this final rule. In addition, we are not extending this flexibility provision to the PLT program for Category 2 marine diesel engines, since they are typically produced in very small volumes.

Finally, while we believe this PLT program takes into account the circumstances of this industry, we also understand that alternative plans may be developed that better account for the individual needs of an individual manufacturer. Thus, a manufacturer may submit an alternative plan for a PLT program, subject to our approval. A manufacturer's petition to use an alternative plan needs to address the need for the alternative and include justifications for the number and representativeness of engines tested. The alternative plan must also have specific provisions regarding what constitutes a PLT failure for an engine family.

L. Miscellaneous Compliance Issues

We are extending the general compliance provisions for land-based nonroad engines to Category 1 and Category 2 marine diesel engines. These include the tampering, defeat device, imported engines and vessels, and general prohibition provisions.

M. Averaging, Banking, and Trading Program

Along with the emission standards, we are including a marine averaging, banking, and trading (ABT) program. An ABT program is an important factor that EPA takes into consideration in setting emission standards that are appropriate under section 213 of the Clean Air Act. ABT reduces the cost and improves the technological feasibility of achieving the standards, helping to ensure the attainment of the standards earlier than would otherwise be possible. Manufacturers gain flexibility in product planning and the opportunity for a more cost-effective introduction of product lines meeting a new standard. ABT also creates an incentive for the early introduction of new technology, which allows certain engine families to act as trail blazers for new technology. This can help provide valuable information to manufacturers on the technology before manufacturers need apply the technology throughout their product line. This early introduction of clean technology improves the feasibility of achieving the standards and can provide valuable information for use in other regulatory programs that may benefit from similar technologies.

The voluntary ABT program allows the certification of one or more engine families within a given manufacturer's product line at emission levels above the applicable emission standards, provided that the increased emissions are offset by one or more families certified below the emission standards. The average of all emissions for a particular manufacturer's production (weighted by sales-weighted average power, production volume and useful life) must be at or below the level of the applicable emission standards. In addition to the averaging program just described, the ABT program contains banking and trading provisions, which allow a manufacturer to generate emission credits and bank them for future use in its own averaging program or sell them to another entity. Compliance is determined on a total mass emissions basis to account for differences in production volume, power and useful life among engine families.

The ABT program for marine diesel engines over 37 kW is based on the corresponding ABT programs recently adopted for land-based nonroad engines (63 FR 56967, October 23, 1998) and locomotives (63 FR 18978, April 16, 1998), which roughly correspond to the Category 1 and Category 2 engines, respectively. A manufacturer choosing to participate in the ABT program must certify each participating engine family to a family emission limit (FEL) determined by the manufacturer during certification testing. A separate FEL must be determined for each pollutant the manufacturer includes in the ABT program. The ABT program is limited to $HC+NO_X$ and PM emissions. Thus, only two different FELs may be generated for a given engine family.

Consistent with the recently finalized land-based nonroad engine program, marine engine credits are to be calculated based on the difference between the applicable standard(s) and FEL(s). However, credit calculation for marine engines is somewhat different than that for land-based nonroad engines, in that a load factor is inserted in the equation. This term is necessary because, contrary to land-based nonroad case, not all marine engines are expected to operate at the same load. The credit calculation equation is as follows:

$$\text{Emission credits} = (\text{Std}—\text{FEL}) \times (\text{UL}) \times (\text{Production}) \times (\text{AvgPR}) \times (10^{-6}) \times (\text{LF})$$

Where:

- Std = the applicable cycle-weighted marine engine $THC+NO_X$ and/or PM emission standard in grams per kilowatt-hour.
- FEL = the family emission limit for the engine family in grams per kilowatt-hour. (The FEL may not exceed the limit established in § 94.304(m) for each pollutant.)
- UL = the useful life in hours.
- Production = the number of engines participating in the averaging, banking, and trading program within the given engine family during the calendar year (or the number of engines in the subset of the engine family for which credits are being calculated). Quarterly production projections are used for initial certification. Actual applicable production/sales volumes are used for end-of-year compliance determination.
- AvgPR = average power rating of all of the configurations within an engine family, calculated on a sales-weighted basis, in kilowatts.
- LF = the load factor, dependent on whether the engine is intended for propulsion or auxiliary applications, as follows:

A. 0.69 for propulsion engines
B. 0.51 for auxiliary engines.

We are prohibiting the generation of credits for one pollutant and the simultaneous use of credits for the other pollutant within the same engine family. In other words, a manufacturer may not simultaneously generate $HC+NO_X$ credits and use PM credits on the same engine family, and vice versa. This is consistent with the recently finalized emission standards for land-based nonroad diesel engines. This also reflects the inherent trade-off between NO_X and PM emissions in diesel engines.

FEL upper limits apply in the same manner as those in the comparable land-based ABT programs to ensure that the emissions from any given family certified under this ABT program not be significantly higher than the applicable emission standards. In general, these FEL upper limits correspond to the existing previous tier of standards for the various classes. In other words, the FEL upper limits are generally the Tier 1 standards for engines certifying according to the ABT provisions relative to the Tier 2 standards. Since we are not including any Tier 1 standards for marine engines in this rulemaking, the land-based Tier 1 standards serve as FEL upper limits for the Tier 2 marine engine standards. When the ABT provisions for land-based nonroad engines were recently revised, there were no Tier 1 standards in place for some land-based categories and pollutants. These cases correspond to some Category 1 marine engines. In those cases we chose FEL upper limits based on typical in-use emission levels of precontrol engines, or existing

California Air Resources Board emission standards. For a more complete discussion of the rationale for the Tier 2 FEL upper limits for Category 1 engines the reader is directed to the most recent final rule concerning land-based nonroad engine emission standards.

Consistent with the land-based ABT programs from which the marine program is derived, ABT credits generated under this program do not expire and are not discounted. Also consistent with the recently finalized land-based nonroad diesel rule, credits generated on land-based engines may not be used for demonstrating compliance for marine diesel engines. We are concerned that manufacturers who produce engines used in both marine and land-based applications could effectively trade out of the marine portion of the program, thereby potentially obtaining a competitive advantage over small marinizers who sell only marine engines. For similar reasons, credits generated on Category 2 engines can not be used for Category 1 engine compliance. For similar reasons we proposed to prevent the use of credits generated on Category 1 engines from being used for Category 2 engines. Since the expressed concern does not apply to credit exchanges going from smaller to bigger engines, the final rule allows this. However, to account for the likelihood that Category 2 engines will undergo more rebuilds in their lifetime than Category 1 engines, manufacturers must discount any Category 1 engine credits by 25 percent if they are used for Category 2 engine compliance.

Effective immediately, early credit generation is available for all Category 1 and 2 commercial CI marine engines. Credits will be generated relative to the actual Tier 2 standards and will be undiscounted. However, if a manufacturer believes it should be allowed to generate credits relative to an engine family's pre-control emission levels (rather than the Tier 2 standards), it can choose to develop engine family-specific baseline emission levels. Credits will then be calculated relative to the manufacturer-generated baseline emission rates, rather than the Tier 2 standards. Engine manufacturers that are not post-manufacture marinizers generate baseline emission rates by testing three engines from the family for which the baseline is being generated, with the baseline calculated as the average of the three engines. Under this option, engines must still meet the Tier 2 standards for all pollutants to generate credits, but the credits will be calculated relative to the generated baseline rather than the Tier 2 standards. Any credits generated between a measured baseline and the Tier 2 levels will be discounted by reducing the measured baseline value by 10 percent. This is to account for the variability of testing in-use engines to establish the baseline due to differences in hours of use and maintenance practices.

Some early banking provisions apply uniquely to post-manufacture marinizers. In recognition of their small size, more difficult resource constraints and general reliance on engine manufacturers to produce base engines, additional flexibility is warranted to ease the transition to these rules. Therefore, post-manufacture marinizers may establish a measured baseline by testing a single engine. Consistent with the provisions of § 94.209(a), the baseline established by this single engine may be used for broadened engine families, provided the marinizer starts with certified land-based engines. Also, they may certify an engine under the early banking program with an engine that does not meet the Tier 2 emission standards. However, since this program is only intended to ease the transition to full compliance with these standards and rules, the credits will only be available to post-manufacture marinizers through the 2007 model years

In the recent rulemaking for nonroad diesel engines, we also set emission standards for marine diesel engines below 37 kW. These engines were also included in the land-based ABT program in that rule, with some restrictions. We are not changing the way we treat these small marine diesel engines. We are not integrating the ABT program in that rule with the requirements in this final rule, so we don't allow manufacturers to exchange credits for engines above and below 37 kW.

Credits may not be exchanged between Category 1 marine engine families and land-based nonroad engine families. As with the restriction of credit exchanges between engine families above and below 37 kW, this restriction applies because the stringency of the land-based standards was determined in the absence of the availability of credit exchange between marine and land-based engines. In addition, there are differences in the way that marine and land-based credits are calculated that are implicit in the calculation and that make the credits somewhat incompatible. The first is that the difference in test duty cycles means there is an implicit difference in load factor between the two. The second is that there are provisions in this final rule for varying useful lives of marine engine families, which are not included in the land-based nonroad regulations. In addition, as discussed above, the actual credit calculation equations for the two programs are different.

We don't allow trading between Category 2 engines and locomotive engines, because locomotive credits are calculated based on expected remaining service life (which could be many useful life periods, due to the inclusion of the remanufacturing provisions for locomotives), whereas Category 2 marine engine credits are only calculated on the basis of a single useful life.

Participation in the marine diesel ABT program is voluntary. For those manufacturers choosing to use the program, compliance for participating engine families is evaluated in two ways. First, compliance of individual engine families with their FELs is determined and enforced in the same manner as compliance with the emission standards in the absence of an averaging, banking and trading program. Each engine family must certify to the FEL (or FELs, as applicable), and the FEL is treated as the emission limit for certification, production-line and in-use testing (as well as for any other testing done for other enforcement purposes) for each engine in the family. Second, the final number of credits available to the manufacturer at the end of a model year after considering the manufacturer's use of credits from averaging, banking and trading must be greater than or equal to zero.

The generation transfer and use of credits in the ABT program does not change the obligation of all manufacturers to meet the applicable standards. This provision is consistent with other mobile source ABT programs. The marine diesel engine certificates of both parties involved in the violating trading transaction could be voided *ab initio* (*i.e.* back to date of issue) if the engine family or families exceed emission standards as a result of a credit shortfall. A buyer of credits which are shown later to be invalid will only be required to make up the credit shortfall. There will be no penalty associated with the unknowing purchase of invalid credits.

The integrity of the marine diesel averaging, banking and trading program depends on manufacturers' accuracy in recordkeeping and reporting and our effectiveness in tracking and auditing this information. Failure of a manufacturer to maintain the required records would result in the certificates for the affected engine family or families being voided retroactively. Violations of reporting requirements could result in a manufacturer being subject to civil penalties as authorized by sections 213 and 205 of the Clean Air Act. We allow positive reporting errors (*i.e.,* those errors that result in an underestimation of the manufacturer's positive credit balance) to be corrected provided that the errors are identified within 180 days of the time we receive the manufacturer's annual report.

N. Special Provisions for Post-Manufacture Marinizers

In general, we set engine emission standards that take effect at a set point in time, concurrently precluding the installation in vehicles or equipment of engines not certified to the new standards. The rigidity of this approach is lessened to some extent through averaging, banking, and trading programs, which allow engine manufacturers to produce engines that exceed the emission limits as long as the added emissions can be offset by engines that emit below the required levels. While this approach generally works well, additional flexibility provisions to help relieve compliance burdens may be needed in special cases.

Marine diesel engines are produced using one of three basic manufacturing methods. In the first, least common, method, marine engines are designed and built exclusively for marine applications. This is typically the case for very large Category 3 engines as well as some smaller engines that are produced for special niche markets. In the second method, an engine manufacturer produces a marine diesel engine using a land-based engine that was built by that same manufacturer. In the third method, an unrelated company, referred to here as a ''marinizer'' produces a marine diesel engine by purchasing a completed or partially completed land-based nonroad or highway engine from an engine manufacturer and modifying it for use in the marine environment according to the marinizing company's own processes. Marinizers tend to be small companies and their output is often designed for niche markets. To address their concerns, we are adopting several provisions to streamline the certification process for marinizers.

1. Application of Flexibility Provisions

The following flexibility provisions will be available only to these marinizers. We define the term post-manufacture marinizer as ''an entity that produces a marine engine by modifying a non-marine engine, whether certified or uncertified, complete or partially complete, where such entity is not controlled by the manufacturer of the base engine or by an entity that also controls the manufacturer of the base engine.'' This definition no longer refers only to companies that ''substantially modify'' non-marine engines because the engine dressing exemption makes provision for companies whose marinization process does not include steps that might affect emissions.

A vessel manufacturer that substantially modifies a certified engine or an engine certified to a previous tier of emission limits or that installs an uncertified engine will be considered a marinizer and must comply with the certification and compliance provisions in this final rule. This clarification is necessary because it is not uncommon for vessel manufacturers to modify marine engines. This may be done to increase the power of an engine or to respond to the needs of a particular user. By considering these vessel manufacturers as marinizers, we will ensure that the engine modifications do not also increase the emissions of an otherwise certified engine.

2. Broader Engine Families

We are allowing marinizers to use a broad engine family definition. Under this provision, a marinizer may include any engines that have similar emission deterioration characteristics in one engine family. Thus, a marinizer could conceivably group all commercial marine diesel engines into one engine family. These engines must all be in the same category and they must be previously certified to meet land-based nonroad, locomotive, or heavy-duty highway emission standards. Separate engine families will be required for each category of marine engines

Note that all other provisions of the final rule apply to this broad engine family including, but not limited to, selection and testing of an emission data engine, application of a deterioration factor (DF), and compliance with the standards.

Even with these larger engine families, marinizers are responsible to conduct testing on a worst-case engine. We can suggest some guidelines for identifying worst-emitter engines without the expense of conducting a full emission test on each engine calibration of each model.

Marinizers can utilize low-cost equipment and a simple procedure to routinely measure parts per million (ppm) levels of gaseous pollutants. We expect that every company operates most or all production engines for quality control purposes, probably with a small number of fixed cycles. Measuring for NO_X emissions during that time provides an additional diagnostic for engine performance, and should provide a good benchmark for comparing emission levels across the product line. Measured ppm NO_X readings should correlate closely with NO_X emission levels from a full certification test. Conversely, the lowest measured NO_X emissions (or highest CO emissions) are an indication of the worst PM emitter. The marinizer may choose to send in test data from a single duty cycle on a single engine, but remains liable for all pollutants on all engines in the family, with any applicable duty cycle.

This guidance suggests a possible means by which a post-manufacture marinizer can limit the testing burden in the effort to certify broad engine families where it may not be apparent which engine to test. If this does not address a marinizer's concerns, the remaining alternative is to certify each engine family, using the standard engine-family definition.

3. Carryover Provisions

Engine manufacturers may carry over engine data generated in a previous model year's certification to certify for the current year. This provision will also apply to the broader engine families of marinizers, with the constraint that the marinizer will need to generate new data if any model in the broad engine family is modified in any way that will make it the highest emitter in the family.

4. Streamlined Certification for Subsequent Years

We are adopting a streamlined certification process for marinizers. This process applies beginning with the year after the relevant implementation dates and continues until engine design changes cause a different engine model to be the highest emitter in the marinizer's broad engine family. Recertification would be required at that point. Under this streamlined certification process, the marinizer submits an annual certification application stating that there have been no changes in the design or production of the engine models that make up the engine family. If there have been changes, the marinizer can still avoid a complete certification submission with test data by demonstrating that there is no change in the identity of the highest emitter or its emissions.

5. Additional Compliance Time

Marinizers generally depend on engine manufacturers producing base engines for marinizing and may therefore be affected by circumstances beyond their control. This can make it difficult to certify the marinized engines. Consequently, there may be situations in which, despite its best efforts, a marinizer cannot meet the implementation dates, even with the flexibility provisions described in this section. Such a situation may occur if an engine supplier without a major business interest in a marinizer were to change or drop an engine model very late in the implementation process, or was not able to supply the marinizer with an engine in sufficient time for the marinizer to recertify the engine. Based on this concern, we are allowing a one-year delay in the implementation dates for post-manufacture marinizers. In this case, marinizers would need only notify us that they are using the additional year before meeting emission standards.

A similar need for additional lead time is appropriate for post-manufacture marinizers to demonstrate compliance with Not-to-Exceed requirements. Post-manufacture marinizer's reliance on another company's base engines affects the time needed for the development and testing work needed to comply. As described above, engine manufacturers generally have until 2007 to comply with Not-to-Exceed requirements. We are extending that to 2010 for post-manufacture marinizers. Three years of extra lead time (compared to one year for the primary certification standards) is appropriate considering their more limited resources.

6. Special Hardship Provision

As a relief mechanism of last resort, we are also extending to post-manufacture marinizers the hardship relief provisions we included in the recently finalized land-based nonroad rule (see 40 CFR 89.102(f)). Under this provision, marinizers can ask us for additional time to meet the emission limits. Under this hardship relief provision, appeals must be made in writing, be submitted before the earliest date of noncompliance, include evidence that failure to comply was not the fault of the marinizer (*e.g.,* a supply contract was broken by the engine supplier), and include evidence that the inability to sell the subject engines will have a major impact on the company's solvency. We would work with the applicant to ensure that all other remedies available under the flexibility provisions are exhausted before granting additional relief, and limit the period of relief to no more than one year. Furthermore, any relief may not exceed one year beyond the date relief is granted. We expect that this provision will be used only rarely. Each granting of relief would be treated as a separate agreement, with no prior guarantee of success, and with the inclusion of measures, agreed to in writing by the marinizer, for recovering the lost environmental benefit. If a marinizer during this hardship period produces certified engines (to emission levels less stringent than would otherwise be required), we would take that into account in determining the lost environmental benefit. This provision is not limited to small businesses, as described in the proposal, since all post-manufacture marinizers have a similar reliance on other manufacturers to produce their engines.

7. Incomplete Marine Engine Exemption

We finalized the nonroad diesel rule with no allowance to import uncertified nonroad engines that will be changed into a marine engine. This final rule is changing the definition of marine engines to include those that are ''intended'' to be installed on a marine vessel. This is necessary to allow post-manufacture marinizers to import loose engines for marinizing. We also include provisions specifically allowing post-manufacture marinizers to import uncertified engines. Once emission standards apply, a marinizer importing such engines must already have a certificate showing that the engine is part of a certified engine family. The regulations also obligate the marinizer to modify all the imported engines to comply with the requirements of 40 CFR part 94.

V. Technological Feasibility

The emissions standards in this final rule apply to a large variety of marine diesel engine sizes and applications. Section 213(a)(3) of the Clean Air Act directs us to establish standards that provide the ''greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the engines or vehicles to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology.''

We have concluded that the requirements in this final rule are appropriate under section 213 of the Clean Air Act and are technologically feasible on the prescribed schedule. The Final RIA and the Summary and Analysis of Comments contain a detailed treatment of emission-control technologies and the basis for selecting the individual standards. The costs associated with these technologies are discussed in Section VII. We have also concluded, as described in the Final RIA, that the emission standards will have no significant negative effect on noise, energy, or safety.

VI. Areas for Future Action

A. Tier 3 Emission Standards

We have decided not to finalize the proposed Tier 3 emission standards at this time. We intend to address this next tier of emission standards through a separate final rule. This may involve a supplemental proposal. Delaying action on Tier 3 standards will allow us to learn from the application of Tier 3 technology to land-based nonroad diesel engines. Also, it will give us time to consider emission control strategies such as aftertreatment.

B. Emission Standards for Remanufactured Engines

As described in the proposed rule, we are aware of the obstacles to implementing emission standards that would apply to existing engines at the point of rebuild or remanufacture. The comments in favor of such standards did not address these questions. Nevertheless, we are concerned that the gradual turnover to new engines and vessels will cause a very slow introduction of new technologies. As new technologies become available to comply with MARPOL Annex VI emission standards and the emission standards in this final rule, we are hopeful that emission controls on new engines will improve even before our standards take effect. Our early banking provisions add an incentive for this to occur.

To the extent that we observe companies not taking reasonable measures to introduce emission control technologies, we will need to reconsider the importance of setting standards on remanufactured engines. In contrast, introduction and use of emission control technologies ahead of the regulated schedule may reduce the need for a control program for these engines.

C. NTE Requirements for Auxiliary Engines

We are not at this time finalizing NTE requirements for auxiliary marine engines in this final rule. We are contemplating, however, to establish NTE requirements for similar land-based nonroad diesel engines. When we adopt such requirements for nonroad diesel engines, we expect to apply the same provisions, including zones and caps, to auxiliary marine diesel engines at the same time.

D. Application of Provisions to Marine Diesel Engines Less than 37 kW

Marine diesel engines less than 37 kW were included in the rulemaking for nonroad diesel engines and are subject to the emission control program contained in 40 CFR Part 89. That program has two tiers of emission limits, phased in from 1999 to 2000 for Tier 1 and 2004 to 2005 for Tier 2. In general, marine diesel engines less than 37 kW are subject to the same certification and compliance program as land-based nonroad diesel engines. Exceptions to this general approach include the duty cycle (E3, but with a C1 option), ABT program restrictions (land-based credits cannot be used to offset marine diesel emissions), and implementation flexibility provisions that allow post-manufacture marinizers to phase in compliance with Tier 1 emission limits according to the schedule extended to nonroad equipment manufacturers.

We intend eventually to consolidate the smaller engines in a general marine diesel engine regulation. Consolidating existing requirements without reopening those issues may, however, cause confusion. Commenters did not feel strongly that there would be an advantage to combining programs, so we are not consolidating them at this time. We will likely pursue the next tier of emission standards (i.e., Tier 3) for all marine diesel engines together. This way we will be able to integrate the requirements for varying engines sizes in the most sensible way.

E. Category 3 Engines

State and environmental organization commenters have made clear in their comments that they are eager to see greater emission reductions from Category 3 engines, including PM emissions. These commenters are particularly concerned that the MARPOL NO_X limits are not stringent enough to appreciably reduce NO_X inventories and ozone levels. Chapter 5 of the Final RIA describes the expected NO_X reductions from the MARPOL Annex VI limits in more detail. There is enough foreign vessel traffic in U.S. ports that these engines contribute substantially to local air pollution in port areas. However, imposing separate national requirements on foreign-flagged ships that use U.S. ports raises sensitive concerns relating to international trade and policy. Consequently, we will recommend that the United States urge the International Maritime Organization to consider and adopt more stringent NO_X limits as well as PM limits for marine diesel engines. Technologies currently under development for very large marine engines hold a lot of promise for reducing their emissions in the future. The emission standards finalized in this final rule for engines capable of burning heavy fuels (15 L/cyl and larger) also suggest that emission improvements can be obtained from slow- and medium-speed engines. Finally, the standards in this final rule for smaller marine diesel engines will provide a good starting point for a new tier of international standards for those engines.

VII. Projected Impacts

A. Environmental Impacts

Chapter 5 of the Final Regulatory Impact Analysis provides a detailed explanation of the methodology we used to determine the environmental benefits from marine diesel engines associated with this final rule. The following discussion gives a general overview of the methodology and the results.

1. Category 1 Engines

For the purposes of the inventory analysis, Category 1 commercial engines were divided into commercial propulsion and auxiliary categories. Annual emissions were then calculated using engine populations, load factors, annual hours of use, rated power, emission factors, turnover, and growth rates. The sources for and the values of these factors are provided in the Final RIA. Note that we received some indication that the annual use for recreational engines may be lower than assumed in the inventory analysis and calculations (Table 5–2 of the Final Regulatory Impact Analysis).

Table 6 presents the projected emissions inventory from Category 1 commercial propulsion and auxiliary marine engines with and without the new emission standards. Table 6 also presents the anticipated effects of the MARPOL Annex VI standards on the Category 1 NO_X inventory. The CO standard places a cap on existing emission levels, so no benefits are claimed here.

TABLE 6.—CATEGORY 1 COMMERCIAL PROPULSION AND AUXILIARY EMISSIONS INVENTORY (THOUSAND SHORT TONS PER YEAR)

Year	HC		NO_X			PM		CO
	Base	Control	Base	MARPOL Annex VI	Control	Base	Control	Base
2000	11.3	11.3	436	434	434	14.0	14.0	69
2005	11.9	11.5	457	449	435	14.7	14.7	72
2010	12.5	11.1	479	465	406	15.4	12.9	76
2020	13.7	10.4	527	506	368	17.0	11.1	83
2030	15.1	11.2	580	556	392	18.7	11.7	91

2. Category 2 Engines

We developed baseline emission inventories for Category 2 marine engines under contract with Carnegie Mellon University.[10] For the purposes of this analysis, emissions are included from all Category 2 engines operated in the Great Lakes, inland waterways, and coastal waters up to 320 kilometers (200 miles) offshore. Emissions from U.S.-flagged vessels were determined using ship registry data, fuel consumption, rated power, operation assumptions, and fuel specific emission factors. Emissions from foreign-flagged vessels were developed based on cargo movements and waterways data, vessel speeds, average dead weight tonnage per ship, and assumed cargo capacity factors.

To model the benefits of the new standards, we applied an engine replacement schedule and new engine standards to the baseline inventory. In this case, no emission reductions are expected beyond the already low levels of HC. Also, the PM and CO standards are intended as caps, and no benefits are claimed for those pollutants. Table 7 shows the projected emissions for

[10] Corbett, J., Fischbeck, P., ''Commercial Marine Emissions Inventory and Analysis for United States Continental and Inland Waterways,'' Carnegie Mellon University, Order No. 8A–0516–NATX, September 1998 (Docket A–97–50; document II–A–01).

Category 2 vessels with and without the new emission standards. The anticipated NO_X impacts for the application of MARPOL Annex VI standards to U.S.-flagged vessels are also included. The analysis presumes no control of emissions beyond MARPOL levels for foreign-flagged vessels; these are included in the analysis because they operate in U.S. waters.

TABLE 7.—CATEGORY 2 EMISSIONS INVENTORY (THOUSAND SHORT TONS PER YEAR)

Year	HC	NO_X			PM	CO
	Base	Base	MARPOL Annex VI	Control	Base	Base
2000	11.1	267	265	265	6.1	34.1
2010	12.3	295	278	266	6.8	37.7
2020	13.6	325	292	250	7.5	41.7
2030	15.0	360	315	243	8.3	46.0

3. Total Impacts

Table 9 contains the baseline annual emissions from marine diesel engines at or above 37 kW as a whole as well as projections of the annual emissions with the MARPOL Annex VI requirements and EPA standards in place. According to this analysis, the emission standards in this final rule will result in reductions, beyond the MARPOL Annex VI limits, of 8 percent HC, 15 percent NO_X, and 11 percent PM percent CO from marine diesel engines in 2020. Nationally, these reductions represents reductions of 0.9 percent NO_X and 0.1 percent PM. The percent reduction would clearly be much higher for port areas. This is especially true for San Diego, Beaumont-Port Arthur, San Francisco and similar ports where marine diesel engines account for a large fraction of the NO_X emissions.[11]

TABLE 9.—EMISSION REDUCTIONS FROM ENGINES SUBJECT TO TIER 2 STANDARDS

		2000	2010	2020	2030
HC (10^3 short tons)	Baseline	22.4	24.7	27.3	30.1
	Controlled	22.4	23.3	24.0	26.2
	Reduction	0%	6%	12%	13%
NO_X (10^3 short tons)	Baseline	702.2	773.5	852.2	939.0
	MARPOL	699.6	742.3	797.5	871.1
	Controlled	699.6	672.1	618.0	634.7
	Reduction*	0%	13%	27%	32%
PM 10^3 short tons	Baseline	20.1	22.2	24.4	27.0
	Controlled	201.1	19.7	18.6	20.0
	Reduction	0%	11%	24%	26%

*This reduction is from the baseline. The Tier 2 standards are expected to achieve a 23 percent reduction in 2020 from the levels expected from the MARPOL standards.

In addition to the effect of the new standards on direct PM emissions noted above, the standards are expected to reduce the concentrations of secondary PM. Secondary PM is formed when NO_X reacts with ammonia in the atmosphere to yield ammonium nitrate particulate. As described in Chapter 5 of the Final RIA, each 100 tons of NO_X reduction results in about a 4-ton reduction in secondary PM. This conversion rate varies from region to region, and is greatest in the West. We estimate that the 257,000 tons per year total NO_X reduction projected for marine engines in 2020 will simultaneously reduce secondary PM by about 10,300 tons. This secondary PM reduction is almost double the direct PM reductions for 2020 projected for this rulemaking.

B. Noise, Energy, and Safety

Engines designed to meet the new emission standards will generally operate at lower noise levels. One important source of noise in diesel combustion is the sound associated with the combustion event itself. When a premixed charge of fuel and air ignites, the very rapid combustion leads to a sharp increase in pressure, which is easily heard and recognized as the characteristic sound of a diesel engine. The conditions that lead to high noise levels also cause high levels of NO_X formation. Fuel injection changes and other NO_X control strategies therefore typically reduce engine noise, sometimes dramatically.

We do not anticipate any negative impacts on energy or safety as a result of this final rule. The impact of the new standards on energy is measured by the effect on fuel consumption from complying engines. Although it is not expected to be a primary compliance strategy, marine engine manufacturers could retard engine timing to comply with emission limits. This could lead to an increase in fuel consumption in the absence of other changes to the engines. Most of the technology changes anticipated in response to the new standards, however, have the potential to reduce fuel consumption as well as emissions. Therefore, on balance, no increase in energy consumption is expected. As far as safety is concerned, we believe that marine engine manufacturers will use only proven technology that is currently used in

[11] Marine diesel engines make up about approximately 17% of the NO_X on a summer day for San Diego, 15% for Beaumont-Port Arthur, and 12% for San Francisco. See the final report ''Commercial Marine Vessel Contributions to Emission Inventories,'' submitted by Booz-Allen & Hamilton, Inc., October 7, 1991 (Docket A–97–50; document II–A–5).

other engines such as nonroad land-based diesel applications, locomotives, and diesel trucks.

C. Economic Impacts

In assessing the economic impact of setting emission standards, we have made a best estimate of the combination of technologies that an engine manufacturer will most likely use to meet the new standards. The analysis presents estimated cost increases for new engines and equipment. This economic impact is comprised of variable costs (for hardware and assembly time) and fixed costs (for research and development, retooling, and certification). The analysis considers total operating costs, including maintenance and fuel consumption, as well. Cost estimates based on these projected technology packages represent an expected change in the cost of engines as they begin to comply with new emission standards. Separate projected costs were derived for engines used in five different ranges of rated power; costs were developed for engines near the middle of the listed ranges. All costs are presented in 1997 dollars. Full details of our cost analysis can be found in Chapter 4 of the Final RIA.

Table 10 summarizes the projected costs of these technologies for meeting the new emission limits. Anticipated incremental cost impacts of the Tier 2 emission limits for the first years of production range from $1,800 to $54,000 per engine, in general with proportionally higher projected costs for larger engines. Long-term impacts on engine costs are expected to be much lower, dropping to levels between $500 and $13,000. Most of this cost reduction is accounted for by the fact that development time and other fixed costs dominate the cost analysis, but disappear after the projected five-year amortization period.

The cost analysis also includes an estimated burden resulting from the need to do additional maintenance work during periodic rebuilds. Complying engines will be equipped with technologies that will require replacement of hardware that is either more expensive than from earlier models, or that is only used because of emission standards. Using typical rebuild schedules, the analysis projects incremental costs for multiple rebuilds, resulting in net-present-value costs that range from $400 to $12,000. In addition to rebuild cost impacts, Table 10 includes an estimated cost burden for conducting production line testing of 1 percent of total industry-wide production.

TABLE 10.—PROJECTED COST IMPACTS BY POWER RATING (KW)

Power rating (kW)	Short-term cost impact	Long-term cost impact	Increased operating cost (npv)
37–225	$1,798	$486	$442
225–560	3,191	846	704
560–1000	25,147	856	206
1000–2000	22,575	1,120	636
2000+	53,923	13,019	12,430

The above analysis presents unit cost estimates for each power category. With current data for engine and vessel sales for each category and projections for the future, these costs can be translated into projected direct costs to the nation for the new emission standards in any year. Aggregate costs are estimated at about $10 million in the first year the new standards apply, increasing to a peak of about $16 million in 2008 as increasing numbers of engines become subject to the new standards. The following years show a drop in aggregate costs as the per-unit cost of compliance decreases, resulting in aggregate costs of $2 million to $3 million after 2010.

Some of the anticipated emission-control technologies improve fuel efficiency, while others may have a negative effect. We believe that, on average, manufacturers will be able to comply with the emission standards without increasing fuel consumption relative to today's models. This will be less true for engine models that have already incorporated advanced technologies. These engines, however, will not need to make the extensive hardware changes projected in our analysis, so they should have a much smaller increase in production costs. Similarly, manufacturers may choose to avoid the high R&D costs of implementing a new technology for an engine family with low sales volume by relying on timing retard as a lower-cost alternative. To show how this compares, we conducted a sensitivity analysis to show the costs associated with a fuel penalty resulting from relying on retarded timing. The Final RIA quantifies the cost of a timing retard strategy, which results in an estimated net-present-value cost increase from fuel consumption ranging from $400 for a 100 kW engine to $19,000 for a 3000 kW engine. This cost results from increased fuel consumption. Considering the established effectiveness of timing retard as a strategy to control NO_X emissions, this may be a viable approach, as either a substitute or a supplemental technology.

D. Cost-effectiveness

We estimated the cost-effectiveness (i.e., the cost per ton of emission reduction) of the new emission standards for the same nominal power ratings of marine engines and vessels highlighted earlier in this section. This analysis has been performed only for Category 1 and Category 2 marine engines, since the final rule does not apply to Category 3 engines. Chapter 6 of the Final RIA contains a more detailed discussion of the cost-effectiveness analysis.

As described in the Final RIA, neither costs nor emission benefits were specifically attributed to the not-to-exceed provisions. The calculated cost-effectiveness of the emission standards presented here therefore includes all the anticipated effects on costs and emission reductions.

1. Tier 2 Cost-Effectiveness

For determining the cost-effectiveness of the Tier 2 emission standards, only benefits beyond those achieved by the MARPOL Annex VI standard were considered. This is a conservative estimate because we attributed all the costs of the technology associated with the Tier 2 levels to this action and did not attribute any of these costs to the MARPOL Annex VI standard. For the sake of this analysis, we assigned the whole cost increase to reducing HC+NO_X emissions. NO_X reductions represent approximately 98 percent of the total HC+NO_X emission reductions expected from the new standards. Table

11 presents the cost-effectiveness of the Tier 2 standards.

TABLE 11.—COST-EFFECTIVENESS OF THE MARINE TIER 2 STANDARDS FOR HC AND NO_X

Nominal power(kW)	NPV of total lifetime costs	NPV benefits (short tons)	Discounted cost-effectiveness	Cost-effectiveness without non-emission benefit.
100	$2,239	4.3	$470	$521
400	3,894	26	137	151
750	25,354	80	318	319
1500	23,210	267	87	88
3000	66,353	750	81	89

Weighting the projected cost and emission benefit numbers presented above by the populations of the individual power categories, we calculated the cost-effectiveness of the Tier 2 HC+NO_X standards for Category 1 and 2, both separately and combined. Table 12 contains the resulting aggregate cost-effectiveness results for the Tier 2 standards.

TABLE 12.—AGGREGATE COST-EFFECTIVENESS FOR THE MARINE TIER 2 STANDARDS FOR HC AND NO_X

	NPV of total lifetime costs	NPV Benefits (short tons)	Discounted Cost-Effectiveness	Cost-Effectiveness without non-emission benefits
Category 1	$4,333	24	$131	$185
Category 2	66,353	750	64	89
Combined	5,667	39	103	172

While the cost estimates described under the Economic Impacts do not take into account the observed value of performance improvements in the field, these non-emission benefits should be taken into account in the calculation of cost-effectiveness. We believe that an equal weighting of emission and non-emission benefits is justified for those technologies which clearly have substantial non-emission benefits, namely fuel injection changes and turbocharging. For some or all of these technologies, a greater value for the non-emission benefits could likely be justified. This has the effect of halving the cost for those technologies in the cost-effectiveness calculation. The cost-effectiveness values in this document are based on this calculation methodology. Cost-effectiveness values are shown without adjustment for non-emission benefits in Tables 11 and 12 for comparison purposes.

2. Comparison to Other Programs

In an effort to evaluate the cost-effectiveness of the HC+NO_X controls for marine engines, we have summarized the cost-effectiveness results for five other recent EPA mobile source rulemakings that required reductions in NO_X (or NMHC+NO_X) emissions. The heavy-duty vehicle portion of the Clean Fuel Fleet Vehicle Program yielded a cost-effectiveness of approximately $1,500 per ton of NO_X. The most recent NMHC+NO_X standards for highway heavy-duty diesel engines yielded a cost-effectiveness of $100-$600 per ton of NMHC+NO_X. The newly adopted standards for locomotive engines yielded a cost-effectiveness of $160–$250 per ton of NO_X. Finally, the recent standards for nonroad engines reported a cost-effectiveness of $410–$600 per ton. The cost-effectiveness of the new HC+NO_X standards for marine diesel engines presented above is more favorable than the cost-effectiveness of many other recent programs.

We have also summarized the cost-effectiveness results for three other recent EPA mobile source rulemakings that required reductions in PM emissions. The cost-effectiveness of the most recent urban bus engine PM standard was estimated to be $10,000–$16,000 per ton, and the cost-effectiveness of the urban bus retrofit/rebuild program was estimated to be approximately $25,000 per ton. The October 1998 nonroad diesel final rule reported a cost-effectiveness for PM of $2,300 per ton (using the same conservative method used here for marine engines). The cost-effectiveness of the PM emission standard for marine diesel engines presented above is more favorable than that of either of the urban bus programs and is comparable to that of the nonroad rule.

We also analyzed the PM cost-effectiveness of the new standards by attributing half of the increased costs to controlling PM to compare with other PM control strategies. This approach effectively double-counts these costs, since we already assess the full cost of the program in the calculation of NO_X+HC cost-effectiveness. This aggregate discounted lifetime cost-effectiveness represents the highest figure that could be expected for cost-effectiveness of the new standards and was calculated to provide an indication of the upper bound of PM cost-effectiveness values. The resulting fleet-wide discounted lifetime cost-effectiveness of the PM standards is approximately $600–$2,600 per ton. This cost-effectiveness is much better than for the urban bus PM standard and the urban bus retrofit/rebuild program and is comparable to the nonroad Tier 2 standards.

In addition to the benefits of reducing ozone within and transported into urban ozone nonattainment areas, the NO_X reductions from the new standards are expected to have beneficial impacts with respect to crop damage, secondary particulate formation, acid deposition, eutrophication, visibility, and the viability of forests, as described earlier.

Because it is difficult to quantify the monetary value of these societal benefits, the cost-effectiveness values presented do not assign any numerical value to them.

VIII. Direct Final Changes

In the proposal for this rulemaking, we did not include modifications to the PLT regulations for locomotives in 40 CFR Part 92. However, on May 13, 1999, EMA submitted a comment to the public docket stating that they believe it is important to make the PLT provisions consistent between locomotives and Category 2 marine engines. We agree with this comment. This requires two revisions to the locomotive regulations. The first revision is the addition of a regulatory provision that authorizes the Administrator to conduct alternate PLT programs instead of the program specified in the regulations. The locomotive FRM preamble stated that we were finalizing such a provision, but the regulatory text was not included in the notice. Thus, we believe there is good cause to finalize this provision without providing the public additional opportunity to comment on it.

The second issue is related to a technical detail of the locomotive PLT program. The previously finalized regulations require that engines tested for PLT have service accumulation ''equivalent to 300 hours of operation.'' EMA commented that we should require only that they have service accumulation ''up to 300 hours of operation,'' which is the same as we proposed for marine engines in this rulemaking. Given the technical nature of this issue, we believe that it would be appropriate to finalize this revision, without providing the public an opportunity to comment on them.

In addition, we are revising the definition of new in 40 CFR 89.2. The existing definition inadvertantly omits a portion of the intended definition. The revised definition is consistent with our other control programs.

The revisions to 40 CFR parts 89 and 92 will be effective February 28, 2000, provided that we do not receive notification on or before January 28, 2000 that someone wishes to file an adverse or negative comment regarding this issue. If we do not receive such comment, this provision will become final and effective without further EPA action. If on the other hand, we do receive notification on or before January 28, 2000 that someone wishes to file an adverse or negative comment regarding this issue, we will withdraw this revision, then propose it and go through full notice-and-comment procedures before finalizing the revision again.

IX. Public Participation

A wide variety of interested parties participated in the rulemaking process that culminates with this final rule. This process provided several opportunities for public comment over a period of several years. We first proposed emission standards for marine diesel engines on November 9, 1994 (59 FR 55929), with a supplemental proposal on February 7, 1996 (61 FR 4600). An Advance Notice of Proposed Rulemaking published May 22, 1998 announced our plan to pursue a new direction in regulating marine diesel engines (63 FR 28309). Comments received on that notice were considered in the development of the proposal (December 11, 1998, 63 FR 68508). The comment period and public hearing associated with that proposal provided another opportunity for public input. We have also met with a variety of stakeholders at various points in the process, including engine manufacturers, engine marinizers, vessel builders, environmental organizations, and states.

We have described and provided responses to the comments on the proposed rule in the Summary and Analysis of Comments, which is available in the docket for this rulemaking and on the Office of Mobile Sources internet home page. Some of the principal areas of comment are highlighted here. Engine manufacturers and others had extensive comment on the feasibility, appropriate level and timing of the standards. Several commenters focused on the proposed Tier 3 standards and the largest Category 2 engines. The final rule divides Category 2 into new subcategories with differentiated emission standards. Additional comments centered on the timing and level of the Tier 2 standards. We address these comments in Chapter 3 of the Final RIA and in Chapter 3 of the Summary and Analysis of Comments. Manufacturers also expressed several concerns with the proposed not-to-exceed provisions. They questioned the principle of Not-to-Exceed requirements generally and their effect on the stringency of the emission standards. They also raised practical issues related to the conditions and ranges associated with Not-to-Exceed testing. The Summary and Analysis of Comments in Chapter 4 provides responses to these comments and describes the several changes we made to the proposed rule to address these concerns.

Though we are not including recreational engines and vessels in this final rule, we need to define these terms here to differentiate them from commercial models. Engine and vessel manufacturers had objections to our proposed definitions, primarily because of potential inconsistencies with Coast Guard requirements and the potential liability for vessel manufacturers. To address these concerns, we drew directly from the existing Coast Guard definitions, with one necessary change. A manufacturer needs to establish a vessel's classification as commercial or recreational before it is sold or used, so the final definitions specify the intent of the manufacturers to produce vessels for recreational purposes as the determining factor. We describe this further in Section II.E. above and in Chapter 2 of the Summary and Analysis of Comments.

X. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866, the Agency must determine whether this regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order (58 FR 51735, Oct. 4, 1993). The order defines ''significant regulatory action'' as any regulatory action 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 programs or the rights and obligations of recipients thereof; or,

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA has submitted this rulemaking to the Office of Management and Budget for review and prepared a Final RIA, which is available in the docket. Any written comments from OMB and any EPA response to OMB comments are also in the public docket. EPA estimates total societal costs resulting from this final rule between $15 million and $20 million for the early years, with a decreasing annual figure once manufacturers fully amortize their fixed costs.

B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment 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. For the reasons set out below, this rulemaking will not have a significant impact on a substantial number of small entities.

EPA has identified four types of entities that may be affected by the final rule: base engine manufacturers, post-manufacture marinizers, commercial vessel builders, and boat operators.

The group of companies that marinize their own base engines presents no small business impacts concerns because all of the manufacturers are large (using the Small Business Administration definitions).

Numerous manufacturers of commercial vessels and commercial boats qualify as small businesses.[12] This final rule, however, is expected to impose very little additional cost on these entities. According to discussions with several of these vessel and boat builders and a related trade association, the production of new commercial vessels is generally flexible enough to accommodate physical changes to an engine without forcing a redesign of the vessel.

The small entities likely to be affected by the final rule are post-manufacture marinizers. These companies modify a land-based engine for use in the marine environment. The following discussion of the impacts on these companies is derived from an impact assessment prepared for this rulemaking by ICF, Inc. and discussions with several potentially affected companies.[13]

Through conversations with engine manufacturers and vessel builders, EPA initially identified twelve small post-manufacture marinizers. Four of these were subsequently eliminated from the Agency's analysis (two were eliminated because there were subsidiary companies of other companies on the list; two others were eliminated because they do not actually manufacture marine engines). The eight remaining companies were used to develop a model small company for purposes of exploring the impact of this rulemaking. Using this model small company as a guide, it was estimated that average compliance costs will range from 1.3 percent to 3.9 percent (relative to total revenues), depending on the compliance cost scenario used.[14] As discussed above, this final rule contains many provisions to ease the burden of compliance for small post-manufacture marinizers.

Because the number of companies examined is so small, EPA also performed an analysis using company-specific data instead of the model company. According to this data, in the least costly compliance scenario, four small post-manufacture marinizers may be affected by more than 3 percent of sales, two companies by 1 to 3 percent of sales, and two companies by less than 1 percent of sales. Of the four companies originally thought to be affected by more than 3 percent of sales, two were eliminated because they, in fact, only dress engines. The original estimate of 3 percent is therefore an overstatement of costs for these companies. As discussed above, a company dressing engines needs to label the engines, but does not need to demonstrate compliance with emission standards. Under the expanded definition of engine dressing in the final rule, one additional company would be exempt from certification requirements for most of its engines, which undergo an exchange of turbochargers. Consequently, it is expected that only one small company may be affected by more than 3 percent of annual sales. It may, however, be possible for all marinizers subject to certification requirements to reduce the impacts of this rule further. For example, they can marinize a cleaner engine, thus reducing the design and development costs associated with bringing a previous tier engine to the new emission standards. Alternatively, they may be able to work more closely with the base engine manufacturer to reduce the need for extensive redesign of their marinization process.

C. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request has been prepared by EPA, and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460 or by calling (202) 260–2740.

The information being collected is to be used by EPA to ensure that new marine diesel engines comply with applicable emissions standards through certification requirements and various subsequent compliance provisions.

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 589 hours per response, with collection required annually. The estimated number of respondents is 32. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjusting the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9 and 48 CFR Chapter 15.

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the Information Collection Request for this rulemaking has been forwarded to the Office of Management and Budget (OMB) for review and approval. The Information Collection Request describes the nature of the information collection and its expected burden and cost. Sections 94.203, 94.206, 94.213, 94.215, 94.308, 94.309, 94.403, 94.404, 94.406, 94.508, 94.509, 94.803, 94.1104, 94.1108 do not apply until the Office of

[12] Commercial vessels are larger merchant vessels, typically exceeding 400 feet in length and generally used in waterborne trade and/or passenger transport. Commercial boats are smaller service, industrial, and fishing vessels generally used in inland and coastal waters. A more indepth description of these industry sectors is contained in ''Industry Characterization: Commercial Marine Vessel Manufacturers'' prepared by ICF, Inc. for US Environmental Protection Agency, Contract No. 68–C5–0010, September 1998 (Docket A–97–50, document II–A–3).

[13] ''Characterization and Small Business Impact Assessment for Small and Large Marine Compression Ignition Engine Manufacturers/Marinizers,'' prepared by ICF Incorporated for U.S. Environmental Protection Agency, Contract Number 68–C5–0010, September 1998 (Docket A–97–50; document II-A–4).

[14] ICF explored three cost scenarios: $100,000, $200,000, and $300,000 per engine family.

Management and Budget has approved the information collection requirements contained in them. We will publish a document in the **Federal Register** announcing the information collection requirements are approved.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 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 of 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. The rule does not impose any enforceable duties on state, local, or tribal governments, i.e., they manufacture no engines and are therefore not required to comply with the requirements of this rule. For the same reason, EPA has determined that this rule also contains no regulatory requirements that might significantly or uniquely affect small governments. EPA projects that annual economic effects will be far less than $100 million. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

In specifying the proposed test procedures for marine engines, we sought to maximize consistency with other nonroad programs in 40 CFR Parts 89 and 92. This is because most commercial marine engines in the U.S. are derivations of engines that are regulated under 40 CFR Parts 89 and 92. The test procedures from these EPA programs sections are very similar to those specified in ISO 8178, with a few important differences. First, the ISO procedures correct measured emissions to a narrow set of reference testing conditions to minimize variability in measured emission values. This is in conflict with our goal generally to ensure to control of emissions over the wide range of engine operation and ambient conditions that the engine can reasonably be expected to encounter in use. The narrow set of ISO reference testing conditions is also in conflict with the not-to-exceed emission standards in this final rule, which specifically requires manufacturers to control emissions in a zone of engine operation over defined ranges of test conditions that are wider. Second, the ISO procedures allow wide discretion for manufacturers to set important test parameters such as rated speed and fuel properties. We describe in the Summary and Analysis of Comments why it is important to define an explicit procedure to determine an objective value for an engine's rated speed and to establish a range of test fuel properties (especially sulfur). Third, an ISO committee is in the process of making various corrections to the calculations and sampling and analysis procedures currently specified in 8178. EPA is hopeful that future ISO test procedures will be developed that are usable for the broad range of testing needed, and that such procedures could then be adopted by reference. EPA also expects that any development of revised test procedures will be done in accordance with ISO procedures and in a balanced manner and thus include the opportunity for involvement of a range of interested parties (potentially including parties such as industry, EPA, state governments, and environmental groups) so that the resulting procedures can represent these different interests.

F. Protection of Children

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to a rule that is determined to be ''economically significant,'' as defined under Executive Order 12866, if the environmental health or safety risk addressed by the rule has a disproportionate effect on children. For these rules, 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 final rule is not subject to Executive Order 13045, because it does not involve decisions on environmental health or safety risks that may disproportionately affect children. Moreover, this rule is determined not to be economically significant under Executive Order 12866.

G. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This final rule 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, as specified in Executive Order 13132. This final rule creates no mandate on state, local or tribal governments. The rule imposes no enforceable duties on these entities, because they do not manufacture any engines that are subject to this rule. This rule will be implemented at the federal level and impose compliance obligations only on private industry. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

H. Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This final rule will not significantly or uniquely affect the communities of Indian tribal governments. As noted above, this rule will be implemented at the federal level and impose compliance obligations only on private industry. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. Submission to Congress and the Comptroller General

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

XI. Judicial Review

Under section 307(b) of the Act, EPA finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by February 28, 2000. Under section 307 (b)(2) of the Act, the requirements published in this document may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

List of Subjects

40 CFR Part 89

Environmental protection, Administrative practice and procedure, Confidential business information, Diesel fuel, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Vessels, Warranties.

40 CFR Part 92

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Railroads, Reporting and recordkeeping requirements, Warranties.

40 CFR Part 94

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Diesel fuel, Imports, Incorporation by reference, Penalties, Reporting and recordkeeping requirements, Research, Vessels, Warranties.

Dated: November 23, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as set forth below.

PART 89—[AMENDED]

1. The authority citation for Part 89 is revised to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7545, 7547, 7549, 7550, and 7601(a).

Subpart A—[Amended]

2. Section 89.1 is revised to read as follows:

§ 89.1 Applicability.

(a) This part applies for all compression-ignition nonroad engines (see definition of ''nonroad engine'' in § 89.2) except those specified in paragraph (b) of this section. This means that the engines for which this part applies include but are not limited to the following:

(1) Compression-ignition engines exempted from the requirements of 40 CFR Part 92 by 40 CFR 92.907;

(2) Compression-ignition engines exempted from the requirements of 40 CFR Part 94 by 40 CFR 94.907;

(3) Portable compression-ignition engines that are used in but not installed in marine vessels (as defined in the General Provisions of the United States Code, 1 U.S.C. 3);

(4) Non-propulsion compression-ignition engines used in locomotives; and

(5) Compression-ignition marine engines with rated power under 37 kW.

(b) (1) *Aircraft engines.* This part does not apply for engines used in aircraft (as defined in 40 CFR 87.1).

(2) *Mining engines.* This part does not apply for engines used in underground mining of engines used in underground mining equipment and regulated by the Mining Safety and Health Administration (MSHA) in 30 CFR Parts 7, 31, 32, 36, 56, 57, 70, and 75.

(3) *Locomotive engines.* This part does not apply for engines that:

(i) Are subject to the standards of 40 CFR part 92; or

(ii) Are exempted from the requirements of 40 CFR part 92 by exemption provisions of 40 CFR part 92 other than those specified in 40 CFR 92.907.

(4) *Marine engines.* This part does not apply for engines that:

(i) Are subject to the standards of 40 CFR part 94;

(ii) Are exempted from the requirements of 40 CFR part 94 by exemption provisions of 40 CFR part 94 other than those specified in 40 CFR 94.907; or

(iii) Are marine engines (as defined in 40 CFR part 94) with rated power at or above 37kW that are manufactured in calendar years in which the standards of 40 CFR part 94 are not yet applicable.

(5) *Hobby engines.* This part does not apply for engines with a per-cylinder displacement of less than 50 cubic centimeters.

3. Section 89.2 is amended by revising the definition of ‘‘New’’ to read as follows:

§ 89.2 Definitions.

* * * * *

New for purposes of this part, means a nonroad engine, nonroad vehicle, or nonroad equipment the equitable or legal title to which has never been transferred to an ultimate purchaser. Where the equitable or legal title to the engine, vehicle, or equipment is not transferred to an ultimate purchaser until after the engine, vehicle, or equipment is placed into service, then the engine, vehicle, or equipment will no longer be new after it is placed into service. A nonroad engine, vehicle, or equipment is placed into service when it is used for its functional purposes. With respect to imported nonroad engines, nonroad vehicles, or nonroad equipment, the term *new* means an engine, vehicle, or piece of equipment that is not covered by a certificate of conformity issued under this part at the time of importation, and that is manufactured after the effective date of a regulation issued under this part which is applicable to such engine, vehicle, or equipment (or which would be applicable to such engine, vehicle, or equipment had it been manufactured for importation into the United States).

* * * * *

PART 92—[AMENDED]

4. The authority citation for Part 92 continues to read as follows:

Authority: 42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7545, 7547, 7549, 7550 and 7601(a).

Subpart F—[Amended]

5. Section 92.503 is amended by adding paragraph (c) to read as follows:

§ 92.503 General Requirements.

* * * * *

(c) Upon request, the Administrator may also allow manufacturers (and remanufacturers, where applicable) to conduct alternate production line testing programs, provided the Administrator determines that the alternate production line testing program provides equivalent assurance that the locomotives and locomotive engines that are being produced conform to the provisions of this part. As part of this allowance or for other reasons, the Administrator may waive some or all of the requirements of this subpart.

6. Section 92.506 is amended by revising paragraph (c) to read as follows:

§ 92.506 Test procedures.

* * * * *

(c) *Service Accumulation/Green Engine factor.* The manufacturer or remanufacturer shall accumulate service on the locomotives and locomotive engines to be tested up to 300 hours of operation. In lieu of conducting such service accumulation, the manufacturer or remanufacturer may establish a Green Engine factor for each regulated pollutant for each engine family to be used in calculating emissions test results. The manufacturer or remanufacturer shall obtain the approval of the Administrator prior to using a Green Engine factor.

* * * * *

7. Part 94 is added to read as follows:

PART 94—CONTROL OF AIR POLLUTION FROM MARINE COMPRESSION-IGNITION ENGINES

Subpart A—General Provisions for Emission Regulations for Compression-Ignition Marine Engines

Sec.
94.1 Applicability.
94.2 Definitions.
94.3 Abbreviations.
94.4 Treatment of confidential information.
94.5 Reference materials.
94.6 Regulatory structure.
94.7 General standards and requirements.
94.8 Exhaust emission standards.
94.9 Compliance with emission standards.
94.10 Warranty period.
94.11 Requirements for rebuilding certified engines.
94.12 Interim provisions.

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94.101 Applicability.
94.102 General provisions.
94.103 Test procedures for Category 1 marine engines.
94.104 Test procedures for Category 2 marine engines.
94.105 Duty cycles.
94.106 Supplemental test procedures.
94.107 Determination of maximum test speed.
94.108 Test fuels.

Subpart C—Certification Provisions

94.201 Applicability.
94.202 Definitions.
94.203 Application for certification.
94.204 Designation of engine families.
94.205 Prohibited controls, adjustable parameters.
94.206 Required information.
94.207 Special test procedures.
94.208 Certification.
94.209 Special provisions for post-manufacture marinizers.
94.210 Amending the application and certificate of conformity.
94.211 Emission-related maintenance instructions for purchasers.
94.212 Labeling.
94.213 Submission of engine identification numbers.
94.214 Production engines.
94.215 Maintenance of records; submittal of information; right of entry.
94.216 Hearing procedures.
94.217 Emission data engine selection.
94.218 Deterioration factor determination.
94.219 Durability data engine selection.
94.220 Service accumulation.
94.221 Application of good engineering judgment.
94.222 Certification of engines on imported vessels.

Subpart D—Certification Averaging, Banking, and Trading Provisions

94.301 Applicability.
94.302 Definitions.
94.303 General provisions.
94.304 Compliance requirements.
94.305 Credit generation and use calculation.
94.306 Certification.

94.307 Labeling.
94.308 Maintenance of records.
94.309 Reports.
94.310 Notice of opportunity for hearing.

Subpart E—Emission-related Defect Reporting Requirements, Voluntary Emission Recall Program

94.401 Applicability.
94.402 Definitions.
94.403 Emission defect information report.
94.404 Voluntary emissions recall reporting.
94.405 Alternative report formats.
94.406 Reports filing: record retention.
94.407 Responsibility under other legal provisions preserved.
94.408 Disclaimer of production warranty applicability.

Subpart F—Manufacturer Production Line Testing Programs

94.501 Applicability.
94.502 Definitions.
94.503 General requirements.
94.504 Right of entry and access.
94.505 Sample selection for testing.
94.506 Test procedures.
94.507 Sequence of testing.
94.508 Calculation and reporting of test results.
94.509 Maintenance of records; submittal of information.
94.510 Compliance with criteria for production line testing.
94.511 [Reserved]
94.512 Suspension and revocation of certificates of conformity.
94.513 Request for public hearing.
94.514 Administrative procedures for public hearing.
94.515 Hearing procedures.
94.516 Appeal of hearing decision.
94.517 Treatment of confidential information.

Subpart G—[Reserved]

Subpart H—Recall Regulations

94.701 Applicability.
94.702 Definitions.
94.703 Applicability of 40 CFR Part 85, Subpart S.

Subpart I—Importation of Nonconforming Engines

94.801 Applicability.
94.802 Definitions.
94.803 Admission.
94.804 Exemptions.
94.805 Prohibited acts; penalties.

Subpart J—Exclusion and Exemption Provisions

94.901 Purpose and applicability.
94.902 Definitions.
94.903 Exclusions.
94.904 Exemptions.
94.905 Testing exemption.
94.906 Manufacturer-owned exemption, display exemption, competition exemption, and foreign trade vessel exemption.
94.907 Engine dressing exemption.
94.908 National security exemption.
94.909 Export exemptions.
94.910 Granting of exemptions.
94.911 Submission of exemption requests.

Subpart K—[Reserved]

Subpart L—General Enforcement Provisions and Prohibited Acts

94.1101 Applicability.
94.1102 Definitions.
94.1103 Prohibited acts.
94.1104 General enforcement provisions.
94.1105 Injunction proceedings for prohibited acts.
94.1106 Penalties.
94.1107 Warranty provisions.
94.1108 In-use compliance provisions.
Appendix I to Part 94—Emission-Related Engine Parameters and Specifications.

Authority: 42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7545, 7547, 7549, 7550 and 7601(a).

Subpart A—General Provisions for Emission Regulations for Compression-Ignition Marine Engines

§ 94.1 Applicability.

(a) Except as noted in paragraphs (b) and (c) of this section, the provisions of this part apply to manufacturers (including post-manufacture marinizers and dressers), rebuilders, owners and operators of:

(1) Marine engines that are compression-ignition engines manufactured (or that otherwise become new) on or after January 1, 2004;

(2) Marine vessels manufactured (or that otherwise become new) on or after January 1, 2004 and which include a compression-ignition marine engine.

(b) Notwithstanding the provision of paragraph (c) of this section, the requirements and prohibitions of this part do not apply with respect to the engines identified in paragraphs (a)(1) and (2) of this section where such engines are:

(1) Category 3 marine engines;

(2) Marine engines with rated power below 37 kW; or

(3) Marine engines on foreign vessels.

(c) The provisions of subpart L of this part apply to all persons with respect to the engines identified in paragraphs (a)(1) and (2) of this section.

(d) The provisions of this part do not apply to any persons with respect to the engines not identified in paragraphs (a)(1) and (2) of this section.

(e) The prohibition specified in § 94.1103(a)(6) applies to all persons with respect to recreational marine engines. Notwithstanding the provision of paragraph (c) of this section, requirements or prohibitions other than the prohibition specified in § 94.1103(a)(6) do not apply with respect to recreational marine engines.

§ 94.2 Definitions.

(a) The definitions of this section apply to this subpart. They also apply to all subparts of this part, except where noted otherwise.

(b) As used in this part, all terms not defined in this section shall have the meaning given them in the Act: *Act* means the Clean Air Act as amended (42 U.S.C. 7401 *et seq.*).

Adjustable Parameter means any device, system, or element of design which is physically or electronically capable of being adjusted (including those which are difficult to access) and which, if adjusted, may affect emissions or engine performance during emission testing.

Administrator means the Administrator of the Environmental Protection Agency or his/her authorized representative.

Aftertreatment system or *aftertreatment component* or *aftertreatment technology* means any system or component or technology mounted downstream of the exhaust valve or exhaust port whose design function is to reduce exhaust emissions.

Applicable standard means a standard to which an engine is subject; or, where an engine is certified to another standard or FEL, applicable standard means the other standard or FEL to which the engine is certified, as allowed by § 94.8. This definition does not apply to subpart D of this part.

Auxiliary engine means a marine engine that is not a propulsion engine.

Auxiliary emission control device (AECD) means any element of design which senses temperature, vessel speed, engine RPM, atmospheric pressure, manifold pressure or vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system (including, but not limited to injection timing); or any other feature that causes in-use emissions to be higher than those measured under test conditions.

Averaging means the exchange of emission credits among engine families within a given manufacturer's product line.

Banking means the retention of emission credits by a credit holder for use in future calendar year averaging or trading as permitted by the regulations in this part.

Base engine means a land-based engine to be marinized, as configured prior to marinization.

Blue Sky Series engine means an engine meeting the requirements of § 94.7(e).

Calibration means the set of specifications, including tolerances, specific to a particular design, version, or application of a component, or components, or assembly capable of functionally describing its operation over its working range.

Category 1 means relating to a marine engine with a rated power greater than or equal to 37 kilowatts and a specific engine displacement less than 5.0 liters per cylinder.

Category 2 means relating to a marine engine with a specific engine displacement greater than or equal to 5.0 liters per cylinder but less than 30 liters per cylinder.

Category 3 means relating to a marine engine with a specific engine displacement greater than or equal to 30 liters per cylinder.

Commercial marine engine means a marine engine that is not a recreational marine engine.

Compliance date means the date on which compliance with a standard becomes mandatory. For example, the compliance date for standards which first apply to the 2004 model year, is January 1, 2004.

Compression-ignition means relating to a type of engine with operating characteristics significantly similar to the theoretical Diesel combustion cycle. The non-use of a throttle to regulate intake air flow for controlling power during normal operation is indicative of a compression-ignition engine.

Configuration means any subclassification of an engine family which can be described on the basis of gross power, emission control system, governed speed, injector size, engine calibration, and other parameters as designated by the Administrator.

Constant-speed engine means an engine that is governed to operate only at a single rated speed.

Crankcase emissions means airborne substances emitted to the atmosphere from any portion of the engine crankcase ventilation or engine lubrication system.

Defeat device means an AECD or other control feature that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal engine operation and use, unless the AECD or other control feature has been identified by the manufacturer in the application for certification, and:

(1) Such conditions are substantially represented by the portion of the applicable duty cycle of § 94.105 during which the applicable emission rates are measured;

(2) The need for the AECD or other control feature is justified in terms of protecting the engine or vessel against damage or accident; or

(3) The AECD or other control feature does not go beyond the requirements of engine starting.

Designated Officer means the person designated by the Director of the Office of Mobile Sources to act as the Designated Officer under the provisions of this part. For marine engines, the address for the Designated Officer is: Group Manager, Engine Compliance Group, U.S. EPA (mail code 6403J), 401 M Street SW, Washington, DC, 20460.

Deterioration factor means the difference between exhaust emissions at the end of useful life and exhaust emissions at the low hour test point expressed as either: the ratio of exhaust emissions at the end of useful life to exhaust emissions at the low hour test point (for multiplicative deterioration factors); or the difference between exhaust emissions at the end of useful life and exhaust emissions at the low hour test point (for additive deterioration factors).

Diesel fuel means any fuel suitable for use in diesel engines which is commonly or commercially known or sold as diesel fuel.

Dresser means any entity that modifies a land-based engine for use in a marine vessel, in compliance with the provisions of § 94.907. This means that dressers may not modify the engine in a way that would affect emissions.

Emission control system means those devices, systems or elements of design which control or reduce the emission of substances from an engine. This includes, but is not limited to, mechanical and electronic components and controls, and computer software.

Emission credits means the amount of emission reduction or exceedance, by an engine family, below or above the emission standard, respectively, as calculated under subpart D of this part. Emission reductions below the standard are considered as ‘‘positive credits,’’ while emission exceedances above the standard are considered as ‘‘negative credits.’’ In addition, ‘‘projected credits’’ refer to emission credits based on the projected applicable production/sales volume of the engine family. ‘‘Reserved credits’’ are emission credits generated within a calendar year waiting to be reported to EPA at the end of the calendar year. ‘‘Actual credits’’ refer to emission credits based on actual applicable production/sales volume as contained in the end-of-year reports submitted to EPA.

Emission-data engine means an engine which is tested for purposes of emission certification or production line testing.

Emission-related defect means a defect in design, materials, or workmanship in a device, system, or assembly which affects any parameter or specification enumerated in Appendix I of this part.

Emission-related maintenance means that maintenance which substantially affects emissions or which is likely to affect the deterioration of the engine or vessel with respect to emissions.

Engine family means a group of engine configurations that are expected to have similar emission characteristics throughout the useful lives of the engines (see § 94.204), and that are (or were) covered (or requested to be covered) by a specific certificate of conformity.

Engineering analysis means a summary of scientific and/or engineering principles and facts that support a conclusion made by a manufacturer, with respect to compliance with the provisions of this part.

EPA Enforcement Officer means any officer or employee of the Environmental Protection Agency so designated in writing by the Administrator or his/her designee.

Exhaust emissions means substances (i.e., gases and particles) emitted to the atmosphere from any opening downstream from the exhaust port or exhaust valve of an engine.

Exhaust gas recirculation means an emission control technology that reduces emissions by routing gases that had been exhausted from the combustion chamber(s) back into the engine to be mixed with incoming air prior to or during combustion. The use of valve timing to increase the amount of residual exhaust gas in the combustion chamber(s) that is mixed with incoming air prior to or during combustion is not considered to be exhaust gas recirculation for the purposes of this part.

Family Emission Limit (FEL) means an emission level declared by the certifying manufacturer to serve in lieu of an otherwise applicable emission standard for certification and compliance purposes in the averaging, banking and trading program. FELs are expressed to the same number of decimal places as the applicable emission standard.

Foreign vessel means a vessel of foreign registry or a vessel operated under the authority of a country other than the United States.

Fuel system means the combination of fuel tank(s), fuel pump(s), fuel lines and filters, pressure regulator(s), and fuel injection components, fuel system vents, and any other component involved in the delivery of fuel to the engine.

Green Engine Factor means a factor that is applied to emission measurements from an engine that has had little or no service accumulation. The Green Engine Factor adjusts emission measurements to be equivalent to emission measurements from an engine that has had approximately 300 hours of use.

Identification number means a specification (for example, model number/serial number combination) which allows a particular engine to be distinguished from other similar engines.

Importer means an entity or person who imports engines from a foreign country into the United States (including its territories).

Intermediate Speed means peak torque speed if peak torque speed occurs from 60 to 75 percent of maximum test speed. If peak torque speed is less than 60 percent of maximum test speed, intermediate speed means 60 percent of maximum test speed. If peak torque speed is greater than 75 percent of maximum test speed, intermediate speed means 75 percent of maximum test speed.

Low hour engine means an engine during the interval between the time that normal assembly operations and adjustments are completed and the time that 300 additional operating hours have been accumulated (including hours of operation accumulated during emission testing, if performed).

Malfunction means a condition in which the operation of a component in an engine occurs in a manner other than that specified by the certifying manufacturer (e.g., as specified in the application for certification); or the operation of an engine in that condition.

Manufacturer means any person engaged in the manufacturing or assembling of new engines or importing such engines for resale, or who acts for and is under the control of any such person in connection with the distribution of such engines. The term manufacturer includes post-manufacturer marinizers, but does not include any dealer with respect to new engines received by such person in commerce.

Manufacturer-owned engine means an uncertified marine engine that is owned and controlled by a manufacturer, is used for product development, and is not sold or leased.

Marine engine means an engine that is installed or intended to be installed on a marine vessel. This definition does not include portable auxiliary engines for which the fueling, cooling and exhaust systems are not integral parts of the vessel.

Marine vessel has the meaning specified in the General Provisions of the United States Code, 1 U.S.C. 3.

Maximum Test Power means:

(1) For Category 1 engines, the power output observed at the maximum test speed with the maximum fueling rate possible.

(2) For Category 2 engines, 90 percent of the power output observed at the maximum test speed with the maximum fueling rate possible.

Maximum Test Torque means the torque output observed at the test speed with the maximum fueling rate possible at that speed.

Method of aspiration means the method whereby air for fuel combustion enters the engine (e.g., naturally aspirated or turbocharged).

Model year means the manufacturer's annual new model production period which includes January 1 of the calendar year, ends no later than December 31 of the calendar year, and does not begin earlier than January 2 of the previous calendar year. Where a manufacturer has no annual new model production period, model year means calendar year.

New marine engine means:

(1)(i) A marine engine, the equitable or legal title to which has never been transferred to an ultimate purchaser;

(ii) A marine engine installed on a vessel, the equitable or legal title to such vessel has never been transferred to an ultimate purchaser; or

(iii) A marine engine that has not been placed into service on a vessel.

(2) Where the equitable or legal title to an engine or vessel is not transferred to an ultimate purchaser prior to its being placed into service, the engine ceases to be new after it is placed into service.

(3) With respect to imported engines, the term ''new marine engine'' means an engine that is not covered by a certificate of conformity under this part at the time of importation, and that was manufactured after the starting date of the emission standards in this part which are applicable to such engine (or which would be applicable to such engine had it been manufactured for importation into the United States).

New vessel means:

(1)(i) A vessel, the equitable or legal title to which has never been transferred to an ultimate purchaser; or

(ii) A vessel that has been modified such that the value of the modifications exceeds 50 percent of the value of the modified vessel.

(2) Where the equitable or legal title to a vessel is not transferred to an ultimate purchaser prior to its being placed into service, the vessel ceases to be new when it is placed into service.

Nonconforming marine engine means a marine engine which is not covered by a certificate of conformity prior to importation or being offered for importation (or for which such coverage has not been adequately demonstrated to EPA); or a marine engine which was originally covered by a certificate of conformity, but which is not in a certified configuration, or otherwise does not comply with the conditions of that certificate of conformity.

Note: This definition does not include domestic marine engines which are not covered by a certificate of conformity prior to their introduction into U.S. commerce; such engines are considered to be ''noncomplying marine engines.''

Oxides of nitrogen means nitric oxide and nitrogen dioxide. Oxides of nitrogen are expressed quantitatively as if the nitric oxide were in the form of nitrogen dioxide (oxides of nitrogen are assumed to have a molecular weight equivalent to nitrogen dioxide).

Passenger has the meaning given by 46 U.S.C. 2101(21). This generally means that a passenger is a person that pays to be on the vessel.

Post-manufacture marinizer means an entity that produces a marine engine by modifying a non-marine engine, whether certified or uncertified, complete or partially complete, where such entity is not controlled by the manufacturer of the base engine or by an entity that also controls the manufacturer of the base engine. In addition, vessel manufacturers that substantially modify marine engines are post-manufacture marinizers. For the purpose of this definition, ''substantially modify'' means changing an engine in a way that could change engine emission characteristics.

Presentation of credentials means the display of the document designating a person as an EPA enforcement officer.

Primary fuel means that type of fuel (e.g., petroleum distillate diesel fuel) that is expected to be consumed in the greatest quantity (volume basis) when the engine is operated in use.

Propulsion engine means an engine that moves a vessel through the water or directs the movement of a vessel.

Recreational marine engine means a propulsion marine engine that is intended by the manufacturer to be installed on a recreational vessel, and which is permanently labeled as follows: ''THIS ENGINE IS CATEGORIZED AS A RECREATIONAL ENGINE UNDER 40 CFR PART 94, AND IS NOT SUBJECT TO THE EMISSION STANDARDS OF THAT PART. INSTALLATION OF THIS ENGINE IN ANY NONRECREATIONAL VESSEL IS

A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.''

Recreational vessel means a vessel that is intended by the vessel manufacturer to be operated primarily for pleasure or leased, rented or chartered to another for the latter's pleasure. For this definition, the term ''operated primarily for pleasure or leased, rented or chartered to another for the latter's pleasure'' does not include the following vessels:

(1) Vessels of less than 100 gross tons that carry more than 6 passengers (as defined in this section).

(2) Vessels of 100 gross tons or more that carry one or more passengers (as defined in this section).

(3) Vessels used solely for competition.

Service life means the total life of an engine. Service life begins when the engine is originally manufactured and continues until the engine is permanently removed from service.

Specific emissions means emissions expressed on the basis of observed brake power, using units of g/kW-hr. Observed brake power measurement includes accessories on the engine if these accessories are required for running an emission test (except for the cooling fan). When it is not possible to test the engine in the gross conditions, for example if the engine and transmission form a single integral unit, the engine may be tested in the net condition. Power corrections from net to gross conditions will be allowed with prior approval of the Administrator.

Specified by a certificate of conformity or *specified in a certificate of conformity* means stated or otherwise specified in a certificate of conformity or an approved application for certification.

Test engine means an engine in a test sample.

Test sample means the collection of engines or vessels selected from the population of an engine family for emission testing.

Tier 2 means relating to an engine subject to the Tier 2 emission standards listed in § 94.8.

Total Hydrocarbon Equivalent means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, alcohols and aldehydes, or other organic compounds that are measured separately as contained in a gas sample, expressed as petroleum-fueled engine hydrocarbons. The hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1.

Trading means the exchange of engine emission credits between credit holders.

Ultimate Purchaser means, with respect to any new engine or vessel, the first person who in good faith purchases such new engine or vessel for purposes other than resale.

United States. United States includes the customs territory of the United States as defined in 19 U.S.C. 1202, and the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

U.S.-directed production volume means the number of marine engine units, subject to this part, produced by a manufacturer for which the manufacturer has reasonable assurance that sale was or will be made to ultimate purchasers in the United States.

Useful life means the period during which an engine is designed to properly function in terms of reliability and fuel consumption, without being remanufactured, specified as hours of operation and years. It is the period during which a new engine is required to comply with all applicable emission standards. (Note: § 94.9(a) specifies minimum requirements for useful life values.)

Vessel means a marine vessel.

Voluntary emission recall means a repair, adjustment, or modification program voluntarily initiated and conducted by a manufacturer to remedy any emission-related defect for which notification of engine or vessel owners has been provided.

§ 94.3 Abbreviations.

The abbreviations of this section apply to all subparts of this part and have the following meanings:

AECD—Auxiliary emission control device.

API—American Petroleum Institute.

ASTM—American Society for Testing and Materials.

°C—Degrees Celsius.

CI—Compression ignition.

CO—Carbon monoxide.

CO$_2$—Carbon dioxide.

disp.—volumetric displacement of an engine cylinder.

EGR—Exhaust gas recirculation.

EP—End point.

EPA—Environmental Protection Agency.

FEL—Family emission limit.

ft—foot or feet.

FTP—Federal Test Procedure.

g—gram(s).

g/kW-hr—Grams per kilowatt hour.

gal—U.S. gallon.

h—hour(s).

HC—hydrocarbon.

Hg—Mercury.

hp—horsepower.

ICI—Independent Commercial Importer.

in—inch(es).

K—Kelvin.

kg—kilogram(s).

km—kilometer(s).

kPa—kilopascal(s).

kW—kilowatt.

L/cyl—liters per cylinder.

m—meter(s).

max—maximum.

mg—milligram(s).

min—minute.

ml—milliliter(s).

mm—millimeter.

NIST—National Institute for Standards and Testing.

NMHC—Non-methane hydrocarbons.

NTIS—National Technical Information Service.

NO—nitric oxide.

NO$_2$—nitrogen dioxide.

NO$_X$—oxides of nitrogen.

No.—number.

O$_2$—oxygen.

pct—percent.

PM—particulate matter.

PMM—post-manufacture marinizer.

ppm—parts per million by volume.

ppmC—parts per million, carbon.

rpm—revolutions per minute.

s—second(s).

SAE—Society of Automotive Engineers.

SEA—Selective Enforcement Auditing.

SI—International system of units (i.e., metric).

THC—Total hydrocarbon.

THCE—Total hydrocarbon equivalent.

U.S.—United States.

U.S.C.—United States Code.

vs—versus.

W—watt(s).

wt—weight.

§ 94.4 Treatment of confidential information.

(a) Any manufacturer may assert that some or all of the information submitted pursuant to this part is entitled to confidential treatment as provided by 40 CFR part 2, subpart B.

(b) Any claim of confidentiality must accompany the information at the time it is submitted to EPA.

(c) To assert that information submitted pursuant to this part is confidential, a person or manufacturer must indicate clearly the items of information claimed confidential by marking, circling, bracketing, stamping, or otherwise specifying the confidential information. Furthermore, EPA requests, but does not require, that the submitter also provide a second copy of its submittal from which all confidential information has been deleted. If a need arises to publicly release nonconfidential information, EPA will assume that the submitter has accurately deleted the confidential information from this second copy.

(d) If a claim is made that some or all of the information submitted pursuant to this part is entitled to confidential treatment, the information covered by that confidentiality claim will be disclosed by EPA only to the extent and by means of the procedures set forth in 40 CFR part 2, subpart B.

(e) Information provided without a claim of confidentiality at the time of submission may be made available to the public by EPA without further notice to the submitter, in accordance with 40 CFR 2.204(c)(2)(i)(A).

§ 94.5 Reference materials.

(a) The documents in paragraph (b) of this section have been incorporated by reference. The 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 inspected at U.S. EPA, OAR, 401 M Street, SW., Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(b) The following paragraphs and tables set forth the material that has been incorporated by reference in this part:

(1) *ASTM material.* The following table sets forth material from the American Society for Testing and Materials that has been incorporated by reference. The first column lists the number and name of the material. The second column lists the section(s) of the part, other than this section, in which the matter is referenced. The second column is presented for information only and may not be all-inclusive. More recent versions of these standards may be used with advance approval of the Administrator. Copies of these materials may be obtained from American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. The table follows:

Document number and name	40 CFR part 94 reference
ASTM D 86–97: ‘‘Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure’’.	§ 94.108 to Subpart D.
ASTM D 93–97: ‘‘Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester’’.	§ 94.108 to Subpart D.
ASTM D 129–95: ‘‘Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)’’.	§ 94.108 to Subpart D.
ASTM D 287–92: ‘‘Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products’’ (Hydrometer Method).	§ 94.108 to Subpart D.
ASTM D 445–97: ‘‘Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and the Calculation of Dynamic Viscosity)’’.	§ 94.108 to Subpart D.
ASTM D 613–95: ‘‘Standard Test Method for Cetane Number of Diesel Fuel Oil’’.	§ 94.108 to Subpart D.
ASTM D 1319–98: ‘‘Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption’’.	§ 94.108 to Subpart D.
ASTM D 2622–98: ‘‘Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry’’.	§ 94.108 to Subpart D.
ASTM D 5186–96: ‘‘Standard Test Method for ‘‘Determination of the Aromatic Content and Polynuclear Aromatic Content of Diesel Fuels and Aviation Turbine Fuels By Supercritical Fluid Chromatography’’.	§ 94.108 to Subpart D.
ASTM E 29–93a: ‘‘Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications’’.	§§ 94.9, 94.218, 94.305, 94.508.

(2) [Reserved]

§ 94.6 Regulatory structure.

This section provides an overview of the regulatory structure of this part.

(a) The regulations of this Part 94 are intended to control emissions from in-use marine engines.

(b) The engines for which the regulations of this part (i.e., 40 CFR part 94) apply are specified by § 94.1, and by the definitions of § 94.2. The point at which an engine or vessel becomes subject to the regulations of this part is determined by the definitions of new marine engine and new marine vessel in § 94.2. Subpart J of this part contains provisions exempting certain engines and vessels from the emission standards in this part under special circumstances.

(c) To comply with the requirements of this part, a manufacturer must demonstrate to EPA that the engine meets the applicable standards of §§ 94.7 and 94.8, and all other requirements of this part. The requirements of this certification process are described in subparts C and D of this part.

(d) Subpart B of this part specifies procedures and equipment to be used for conducting emission tests for the purpose of the regulations of this part.

(e) Subparts E, F, and H of this part specify requirements for manufacturers after certification; that is during production and use of the engines.

(f) Subpart I of this part contains requirements applicable to the importation of marine engines covered by the provisions of this part.

(g) Subpart L of this part describes prohibited acts and contains other enforcement provisions relating to marine engines and vessels covered by the provisions of this part.

(h) Unless specified otherwise, the provisions of this part apply to all marine engines and vessels subject to the emission standards of this part.

§ 94.7 General standards and requirements.

(a) Marine engines and vessels may not be equipped with a defeat device.

(b) An engine may not be equipped with an emission control system for the purpose of complying with emission standards if such a system will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function.

(c) An engine with an emission control system may not emit any noxious or toxic substance which would not be emitted in the operation of the engine in the absence of such a system, except as specifically permitted by regulation.

(d) All engines subject to the emission standards of this part shall be equipped with a connection in the engine exhaust system that is located downstream of the engine and before any point at which the exhaust contacts water (or any other cooling/scrubbing medium) for the temporary attachment of gaseous and/or particulate emission sampling equipment. This connection shall be internally threaded with standard pipe threads of a size not larger than one-half inch, and shall be closed by a pipe-plug when not in use. (Equivalent connections are allowed.)

(e) Electronically controlled engines subject to the emission standards of this part shall broadcast on engine's controller area networks engine torque (as percent of maximum) and engine speed.

§ 94.8 Exhaust emission standards.

(a) Exhaust emissions from marine compression-ignition engines shall not exceed the applicable exhaust emission standards contained in Table A–1 as follows:

TABLE A–1.—PRIMARY TIER 2 EXHAUST EMISSION STANDARDS (G/KW-HR)

Engine size—liters/cylinder, rated power	Category	Model Year[1]	THC+NO$_X$ g//kW-hr	CO g/kW-hr	PM g/kW-hr
Disp. <0.9 and power ≥ 37 kW	Category 1	2005	7.5	5.0	0.40
0.9 ≤disp. <1.2 all power levels	Category 1	2004	7.2	5.0	0.30
1.2 ≤disp. <2.5 all power levels	Category 1	2004	7.2	5.0	0.20
2.5 ≤disp. <5.0 all power levels	Category 1	2007	7.2	5.0	0.20
5.0 ≤disp. <15.0 all power levels	Category 2	2007	7.8	5.0	0.27
15.0 ≤disp. <20.0 power < 3300 kW	Category 2	2007	8.7	5.0	0.50
15.0 ≤disp. <20.0 power ≥ 3300 kW	Category 2	2007	9.8	5.0	0.50
20.0 ≤disp. <25.0 all power levels	Category 2	2007	9.8	5.0	0.50
25.0 ≤disp. <30.0 all power levels	Category 2	2007	11.0	5.0	0.50

[1] The model years listed indicate the model years for which the specified standards start.

(b) Exhaust emissions of oxides of nitrogen, carbon monoxide, hydrocarbon, and particulate matter (and other compounds, as applicable) shall be measured using the procedures set forth in subpart B of this part.

(c) In lieu of the THC+NO$_X$ standards, and PM standards specified in paragraph (a) of this section, manufacturers may elect to include engine families in the averaging, banking, and trading program, the provisions of which are specified in subpart D of this part. The manufacturer shall then set a family emission limit (FEL) which will serve as the standard for that engine family.

(d)(1) Naturally aspirated engines subject to the standards of this section shall not discharge crankcase emissions into the ambient atmosphere.

(2) For engines using turbochargers, pumps, blowers, or superchargers for air induction, if the engine discharges crankcase emissions into the ambient atmosphere in use, these crankcase emissions shall be included in all exhaust emission measurements.

(e) Exhaust emissions from propulsion engines subject to the standards (or FELs) in paragraph (a), (c), or (f) of this section shall not exceed:

(1) 1.20 times the applicable standards (or FELs) when tested in accordance with the supplemental test procedures specified in § 94.106 at loads greater than or equal to 45 percent of the maximum power at rated speed or 1.50 times the applicable standards (or FELs) at loads less than 45 percent of the maximum power at rated speed; or

(2) 1.25 times the applicable standards (or FELs) when tested over the whole power range in accordance with the supplemental test procedures specified in § 94.106.

(f) The following paragraphs define the requirements for low-emitting Blue Sky Series engines.

(1) *Voluntary standards.* Engines may be designated ‘‘Blue Sky Series’’ engines through the 2010 model year by meeting the voluntary standards listed in Table A–2, which apply to all certification and in-use testing, as follows:

TABLE A–2.—VOLUNTARY EMISSION STANDARDS (G/KW-HR)

Rated Brake Power (kW)	THC+NO$_X$	PM
Power ≥37 kW, and displ.<0.9	4.0	0.24
0.9≤displ.<1.2	4.0	0.18
1.2≤displ.<2.5	4.0	0.12
2.5≤displ.<5	5.0	0.12
5≤displ.<15	5.0	0.16
15 ≤disp. <20, and power <3300 kW	5.2	0.30
15 ≤disp. <20, and power ≥3300 kW	5.9	0.30
20 ≤disp. <25	5.9	0.30
25 ≤disp. <30	6.6	0.30

(2) *Additional standards.* Blue Sky Series engines are subject to all provisions that would otherwise apply under this part.

(3) *Test procedures.* Manufacturers may use an alternate procedure to demonstrate the desired level of emission control if approved in advance by the Administrator.

(g) Standards for alternative fuels. The standards described in this section apply to compression-ignition engines, irrespective of fuel, with the following two exceptions:

(1) Engines fueled with natural gas shall comply with NMHC+NO$_X$ standards that are numerically equivalent to the THC+NO$_X$ described in paragraph (a) of this section; and

(2) Engines fueled with alcohol fuel shall comply with THCE+NO$_X$ standards that are numerically equivalent to the THC+NO$_X$ described in paragraph (a) of this section.

§ 94.9 Compliance with emission standards.

(a) The general standards and requirements in § 94.7 and the emission standards in § 94.8 apply to each new engine throughout its useful life period. The useful life is specified both in years and in hours of operation, and ends when either of the values (hours of operation or years) is exceeded.

(1) The minimum useful life is 10 years or 10,000 hours of operation for Category 1 and 10 years or 20,000 hours of operation for Category 2.

(2) The manufacturer shall specify a longer useful life if the engine is designed to remain in service longer than the applicable minimum useful life without being rebuilt. A manufacturer's recommended time to remanufacture/rebuild longer than the minimum useful life is one indicator of a longer design life.

(3) Upon request by the manufacturer, the Administrator may allow useful life values shorter than the minimum values specified in paragraph (a)(1) of this section, provided:

(i) The useful life value may not be shorter than any of the following:

(A) 1000 hours of operation.

(B) The manufacturer's recommended overhaul interval.

(C) The mechanical warranty provided by the manufacturer to the owner.

(ii) The manufacturer must have documentation from in-use engines showing that these engines will rarely operate longer than the alternate useful life.

(iii) The manufacturer displays the useful life on the engine label.

(b) Certification is the process by which manufacturers apply for and obtain certificates of conformity from EPA, which allows the manufacturer to introduce into commerce new marine engines for sale or use in the U.S.

(1) Compliance with the applicable emission standards by an engine family shall be demonstrated by the certifying manufacturer before a certificate of conformity may be issued under § 94.208. Manufacturers shall demonstrate compliance using emission data, measured using the procedures specified in Subpart B of this part, from a low hour engine. A development engine that is equivalent in design to the marine engines being certified may be used for Category 2 certification.

(2) The emission values to compare with the standards shall be the emission values of a low hour engine, or a development engine, adjusted by the deterioration factors developed in accordance with the provisions of § 94.219. Before any emission value is compared with the standard, it shall be rounded, in accordance with ASTM E 29–93a (incorporated by reference at § 94.5), to the same number of significant figures as contained in the applicable standard.

(c) Upon request by the manufacturer, the Administrator may limit the applicability of exhaust emission requirements of § 94.8(e) as necessary for safety or to otherwise protect the engine.

§ 94.10 Warranty period.

(a) Warranties imposed by § 94.1107 shall apply for a period of operating hours equal to at least 50 percent of the useful life in operating hours or a period of years equal to at least 50 percent of the useful life in years, whichever comes first.

(b) Warranties imposed by § 94.1107 shall apply for a period not less than any mechanical warranties provided by the manufacturer to the owner.

§ 94.11 Requirements for rebuilding certified engines.

(a) The provisions of this section apply with respect to engines subject to the standards prescribed in § 94.8 and are applicable to the process of engine rebuilding. Engine rebuilding means to overhaul an engine or to otherwise perform extensive service on the engine (or on a portion of the engine or engine system). For the purpose of this definition, perform extensive service means to disassemble the engine (or portion of the engine or engine system), inspect and/or replace many of the parts, and reassemble the engine (or portion of the engine or engine system) in such a manner that significantly increases the service life of the resultant engine.

(b) When rebuilding an engine, portions of an engine, or an engine system, there must be a reasonable technical basis for knowing that the resultant engine is equivalent, from an emissions standpoint, to a certified configuration (i.e., tolerances, calibrations, specifications), and the model year(s) of the resulting engine configuration must be identified. A reasonable basis would exist if:

(1) Parts installed, whether the parts are new, used, or rebuilt, are such that a person familiar with the design and function of motor vehicle engines would reasonably believe that the parts perform the same function with respect to emission control as the original parts; and

(2) Any parameter adjustment or design element change is made only:

(i) In accordance with the original engine manufacturer's instructions; or

(ii) Where data or other reasonable technical basis exists that such parameter adjustment or design element change, when performed on the engine or similar engines, is not expected to adversely affect in-use emissions.

(c) When an engine is being rebuilt and remains installed or is reinstalled in the same vessel, it must be rebuilt to a configuration of the same or later model year as the original engine. When an engine is being replaced, the replacement engine must be an engine of (or rebuilt to) a certified configuration that is equivalent, from an emissions standpoint, to the engine being replaced.

(d) At time of rebuild, emission-related codes or signals from on-board monitoring systems may not be erased or reset without diagnosing and responding appropriately to the diagnostic codes, regardless of whether the systems are installed to satisfy requirements in § 94.211 or for other reasons and regardless of form or interface. Diagnostic systems must be free of all such codes when the rebuilt engine is returned to service. Such signals may not be rendered inoperative during the rebuilding process.

(e)(1) When conducting a rebuild, all critical emission-related components listed in Appendix I of this part not otherwise addressed by paragraphs (b) through (d) of this section must be checked and cleaned, adjusted, repaired, or replaced as necessary, following manufacturer recommended practices.

(2) During the installation of a rebuilt engine, all critical emission-related components listed in Appendix I of this part not otherwise addressed by paragraphs (b) through (d) of this section must be checked as necessary, following manufacturer recommended practices.

(f) Records shall be kept by parties conducting activities included in paragraphs (b) through (e) of this section. At minimum the records shall include the hours of operation at the time of rebuild, a listing of work performed on the engine and emission-related control components (including a listing of parts and components used, engine parameter adjustments, emission-related codes or signals responded to and reset), and work performed under paragraph (e) of this section.

(1) Parties may keep records in whatever format or system they choose as long as the records are understandable to an EPA enforcement officer or can be otherwise provided to an EPA enforcement officer in an understandable format when requested.

(2) Parties are not required to keep records of information that is not reasonably available through normal business practices including information on activities not conducted by themselves or information that they cannot reasonably access.

(3) Parties may keep records of their rebuilding practices for an engine family rather than on each individual engine rebuilt in cases where those rebuild practices are followed routinely.

(4) Records must be kept for a minimum of two years after the engine is rebuilt.

§ 94.12 Interim provisions.

This section contains provisions that apply for a limited number of calendar years or model years. These provisions apply instead of other provisions of this part.

(a) *Compliance date of standards.* Post-manufacture marinizers may elect to delay the model year of the Tier 2 standards as specified in § 94.8 by one year for each engine family. Compliance with the standards becomes mandatory after that year. Post-manufacture marinizers wishing to take advantage of this provision must inform the Designated Officer of their intent to do so in writing before the date that compliance with the standards would otherwise be mandatory.

(b) *Early banking of emission credits.* (1) A manufacturer may optionally certify engines manufactured before the date the Tier 2 standards take effect to earn emission credits under the averaging, banking, and trading program. Such optionally certified engines are subject to all provisions relating to mandatory certification and enforcement described in this part. Manufacturers may begin earning credits on January 28, 2000.

(2) Consistent with the provisions of Subpart D of this part, NO_X and PM emission credits may be generated from engines prior to the applicable effective compliance date of the applicable standard (i.e., the effective compliance date in § 94.8(a), as applicable), relative to baseline emission rates.

(3)(i) THC+NO_X credits generated under this paragraph (b) shall be calculated as specified in § 92.305, except that the baseline emission rate may be either the applicable standard or a measured THC+NO_X baseline level for the configuration with the lowest NO_X emission rate in the applicable engine family. The additional credits resulting from using a measured baseline (instead of the applicable standard) shall be discounted by 10 percent. This discount does not apply to the portion of the credits resulting from the engine's emissions being below the applicable standard. Baseline emission rates may not exceed the IMO NO_X limits.

(ii) PM credits generated under this paragraph (b) shall be calculated as specified in § 94.305, except that the applicable standard may be replaced by a measured PM baseline emission rate for the configuration with the lowest NO_X emission rate in the applicable engine family that is approved in advance by the Administrator. The additional credits resulting from using a measured baseline (instead of the applicable standard) shall be discounted by 10 percent. This discount does not apply to the portion of the credits resulting from the engine's emissions being below the applicable standard.

(4)(i) For post-manufacture marinizers, measured baseline emission levels may be based on emissions from a single engine for each engine family.

(ii) For all other manufacturers, measured baseline emission levels must be based on the average of emissions from at least three engines for each engine family.

(iii) The Administrator must approve any measured baselines in advance.

(5) For an engine to be eligible to generate early credits under this paragraph (b), its certified emission levels for all pollutants must be below the Tier 2 standards listed in § 94.8, with the following exception: PMMs may include in this early credit program Category 1 marine engines with certified emissions above the Tier 2 standards listed in § 94.8. Early credits generated by Category 1 marine engines with certified emissions above the Tier 2 standards listed in § 94.8 may not be used for model year 2008 or later engines.

(c) Testing of Category 1 engines subject to the requirements of this part that is conducted by the Administrator shall be performed using test fuels that meet the specifications in § 94.108 and have a sulfur content no higher than 0.20 weight percent, unless the PM emission rates are corrected for the effect of a higher fuel sulfur content.

(d) Post-manufacture marinizers may import an uncertified engine for marinization, in cases where the engine in the final marinized configuration is not subject to the standards of this part because:

(1) The model year of the marinized engine is prior to the first model year for which engines of that size are subject to the standards;

(2) The post-manufacture marinizer is marinizing the engine under paragraph (a) of this section; or

(3) The post-manufacture marinizer is granted hardship relief from the Tier 2 standards under § 94.209(c).

(e) Notwithstanding the other provisions of this part, the requirements of § 94.8(e) start with 2010 model year engines for post-manufacture marinizers and 2007 model year engines for all other engine manufacturers.

Subpart B—Test Procedures

§ 94.101 Applicability.

Provisions of this subpart apply for testing performed by the Administrator or a manufacturer.

§ 94.102 General provisions.

(a) The test procedures specified in this part are intended to produce emission measurements that are equivalent to emission measurements that would result from emission tests performed during in-use operation using the same engine configuration installed in a vessel.

(b) Test procedures otherwise allowed by the provisions of this subpart shall not be used where such procedures are not consistent with good engineering practice and the regulatory goal specified in paragraph (a) of this section.

(c) Alternate test procedures may be used if shown to yield equivalent results, and if approved in advance by the Administrator.

§ 94.103 Test procedures for Category 1 marine engines.

(a) Gaseous and particulate emissions shall be measured using the test procedures specified in 40 CFR part 89, except as otherwise specified in this subpart.

(b) The Administrator may specify changes to the provisions of paragraph (a) of this section that are necessary to comply with the general provisions of § 94.102.

§ 94.104 Test procedures for Category 2 marine engines.

(a) Gaseous and particulate emissions shall be measured using the test procedures specified in 40 CFR part 92, except as otherwise specified in this subpart.

(b)(1) The requirements of 40 CFR part 92 related to charge air temperatures, engine speed and load, and engine air inlet restriction pressures do not apply for marine engines.

(2) For marine engine testing, charge air temperatures, engine speed and load, and engine air inlet restriction pressures shall be representative of typical in-use marine engine conditions.

(c) The Administrator may specify changes to the provisions of paragraph (a) of this section that are necessary to comply with the general provisions of § 94.102.

§ 94.105 Duty cycles.

(a) *Overview.* For the purpose of determining compliance with the emission standards of § 94.8, except for those in § 94.8(e), engines shall be tested using the appropriate duty cycles described in this section.

(b) *General cycle.* Propulsion engines that are used with (or intended to be used with) fixed-pitch propellers, and any other engines for the other duty cycles of this section don't apply, shall be tested using the duty cycle described in the following Table B–1:

TABLE B–1.—GENERAL MARINE DUTY CYCLE

Mode No.	Engine speed[1] (percent of maximum test speed)	Percent of maximum test power[2]	Minimum time in mode (minutes)	Weighting factors
1	100	100	5.0	0.20
2	91	75	5.0	0.50

TABLE B–1.—GENERAL MARINE DUTY CYCLE—Continued

Mode No.	Engine speed [1] (percent of maximum test speed)	Percent of maximum test power [2]	Minimum time in mode (minutes)	Weighting factors
3	80	50	5.0	0.15
4	63	25	5.0	0.15

[1] Engine speed: ±2 percent of point.
[2] Power: ±2 percent of engine maximum value.

(c) *Variable-pitch and electrically coupled propellers.* (1) Constant-speed propulsion engines that are used with (or intended to be used with) variable-pitch propellers or with electrically coupled propellers shall be tested using the duty cycle described in the following Table B–2:

TABLE B–2.—DUTY CYCLE FOR CONSTANT-SPEED PROPULSION ENGINES

Mode No.	Engine speed [1] (percent of maximum test speed)	Percent of maximum test power [2]	Minimum time in mode (minutes)	Weighting factors
1	100	100	5.0	0.20
2	100	75	5.0	0.50
3	100	50	5.0	0.15
4	100	25	5.0	0.15

[1] Engine speed: ±2 percent of point.
[2] Power: ±2 percent of engine maximum value.

(2) For the purpose of determining compliance with the emission standards of § 94.8, variable-speed propulsion engines that are used with (or intended to be used with) variable-pitch propellers or with electrically coupled propellers shall be tested using the duty cycle described in Table B–3, which follows:

TABLE B–3.—DUTY CYCLE FOR VARIABLE SPEED PROPULSION ENGINES USED ON NON-PROPELLER LAW VESSELS AND FOR VARIABLE SPEED AUXILIARY ENGINES

Test segment	Mode No.	Engine speed [1]	Percent of maximum test torque [2]	Minimum time in mode (minutes)	Weighting factors
1	1	Maximum Test Speed	100	5.0	0.15
1	2	Maximum Test Speed	75	5.0	0.15
1	3	Maximum Test Speed	50	5.0	0.15
1	4	Maximum Test Speed	10	5.0	0.10
2	5	Intermediate	100	5.0	0.10
2	6	Intermediate	75	5.0	0.10
2	7	Intermediate	50	5.0	0.10
2	8	Idle	0	5.0	0.15

[1] Engine speed (non-idle): ±2 percent of point. Engine speed (idle): Within manufacturer's specifications. Idle speed is specified by the manufacturer.
[2] Torque (non-idle): ±2 percent of engine maximum value. Torque (idle): minimum fueling rate Load less than 5 percent of peak torque.

(d) *Auxiliary.* For the purpose of determining compliance with the emission standards of § 94.8:

(1) Constant speed auxiliary engines shall be tested using the duty cycle described in Table B–4, which follows:

TABLE B–4.—DUTY CYCLE FOR CONSTANT-SPEED AUXILIARY ENGINES

Mode No.	Engine speed [1]	Percent of maximum test torque [2]	Minimum time in mode (minutes)	Weighting factors
1	Maximum Test Speed	100	5.0	0.05
2	Maximum Test Speed	75	5.0	0.25
3	Maximum Test Speed	50	5.0	0.30
4	Maximum Test Speed	25	5.0	0.30

TABLE B–4.—DUTY CYCLE FOR CONSTANT-SPEED AUXILIARY ENGINES—Continued

Mode No.	Engine speed[1]	Percent of maximum test torque[2]	Minimum time in mode (minutes)	Weighting factors
5	Maximum Test Speed	10	5.0	0.10

[1] Engine speed: ±2 percent of point.
[2] Torque: ±2 percent of engine maximum value.

(2) Variable speed auxiliary engines shall be tested using the duty cycle described in Table B–3 in paragraph (c)(2) of this section.

§ 94.106 Supplemental test procedures.

This section describes the test procedures for supplemental testing conducted to determine compliance with the exhaust emission requirements of § 94.8(e). In general, the supplemental test procedures are the same as those otherwise specified by this subpart, except that they cover any speeds, loads, ambient conditions, and operating parameters that may be experienced in use. The test procedures specified by other sections in this subpart also apply to these tests, except as specified in this section.

(a) Notwithstanding other provisions of this subpart, testing conducted to determine compliance with the exhaust emission requirements of § 94.8(e) may be conducted:

(1) At any speed and load (or any combination of speeds and loads that is nominally steady-state) within the applicable Not To Exceed Zone specified in paragraph (b) of this section;

(2)(i) Without correction, at any intake air temperature between 13°C and 35°C (or between 13°C and 30°C for engines not drawing intake air directly from a space that could be heated by the engine);

(ii) Without correction at any ambient water temperature (or equivalent) between 5°C and 27°C;

(iii) Without correction at any ambient humidity between 7.1 and 10.7 grams of moisture per kilogram of dry air; and

(3) With a continuous sampling period not less than 30 seconds in duration.

(b) The specified Not to Exceed Zones for marine engines are defined as follows. These Not to Exceed Zones apply, unless a modified zone is established under paragraph (c) of this section.

(1) For Category 1 engines certified using the duty cycle specified in § 94.105(a), the Not to Exceed zones are defined as follows:

(i) The Not to Exceed zone is the region between the curves power = 1.15 × SPD^2 and power = 0.85 × SPD^4, excluding all operation below 25% of maximum power at rated speed and excluding all operation below 63% of maximum test speed.

(ii) This zone is divided into two subzones, one above and one below 45% of maximum power at rated speed.

(iii) SPD in paragraph (b)(1)(i) of this section refers to percent of maximum test speed.

(iv) See Figure B–1 for an illustration of this Not to Exceed zone which follows:

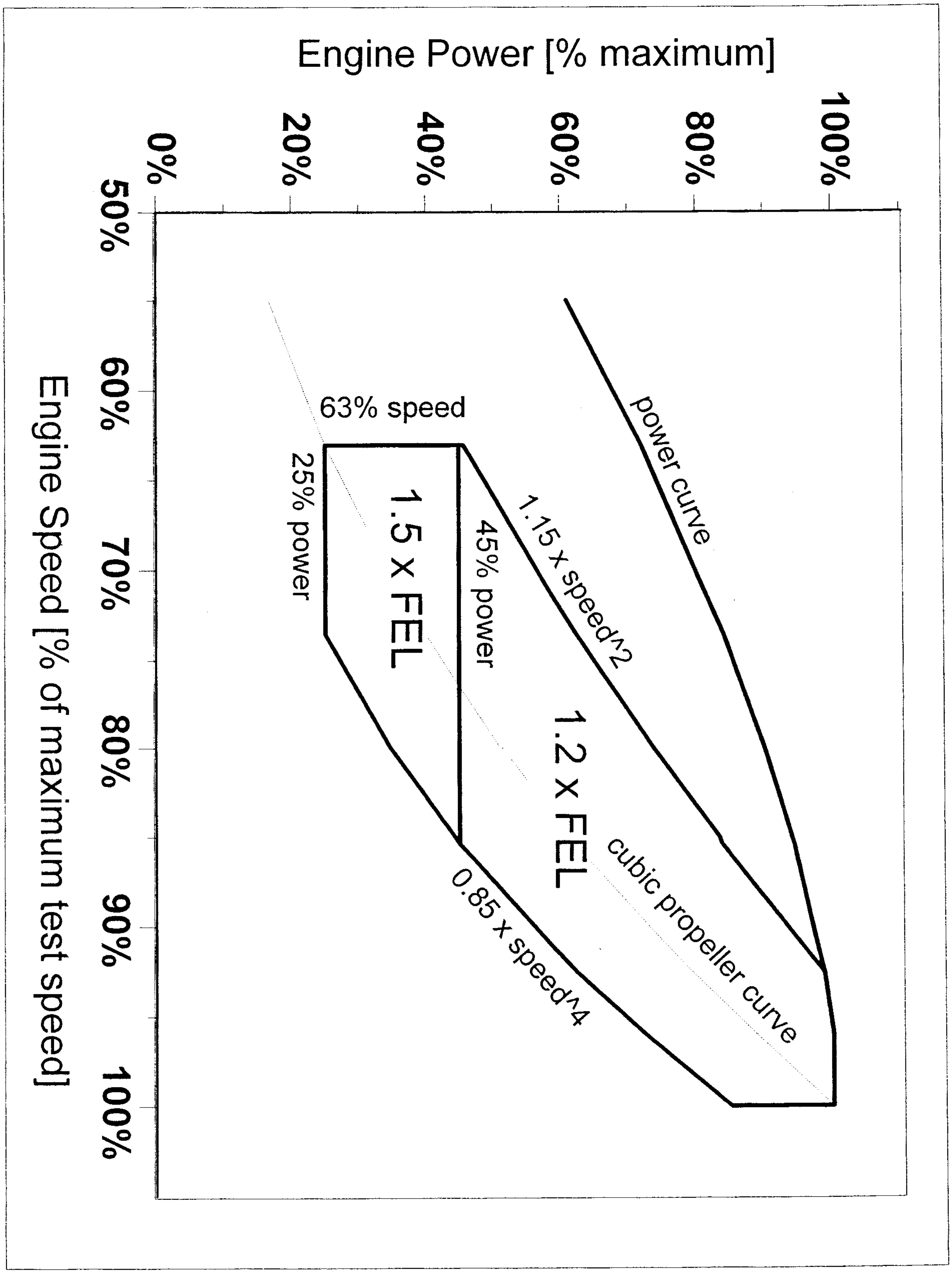

Figure B-1

(2) For Category 2 engines certified using the duty cycle specified in § 94.105(a), the Not to Exceed zones are defined as follows:

(i) The Not to Exceed zone is the region between the curves power = 1.04 × SPD^2 and power = 0.76 × SPD^4, excluding all operation below 25% of maximum power at rated speed and excluding all operation below 63% of maximum test speed.

(ii) This zone is divided into two subzones, one above and one below 45% of maximum power at rated speed.

(iii) SPD in paragraph (b)(2)(i) of this section refers to percent of maximum test speed.

(iv) See Figure B–2 in paragraph (b)(3) of this section for an illustration of this Not to Exceed zone.

(3) For engines certified using the duty cycle specified in § 94.105(b)(2), the Not to Exceed zones are defined as follows:

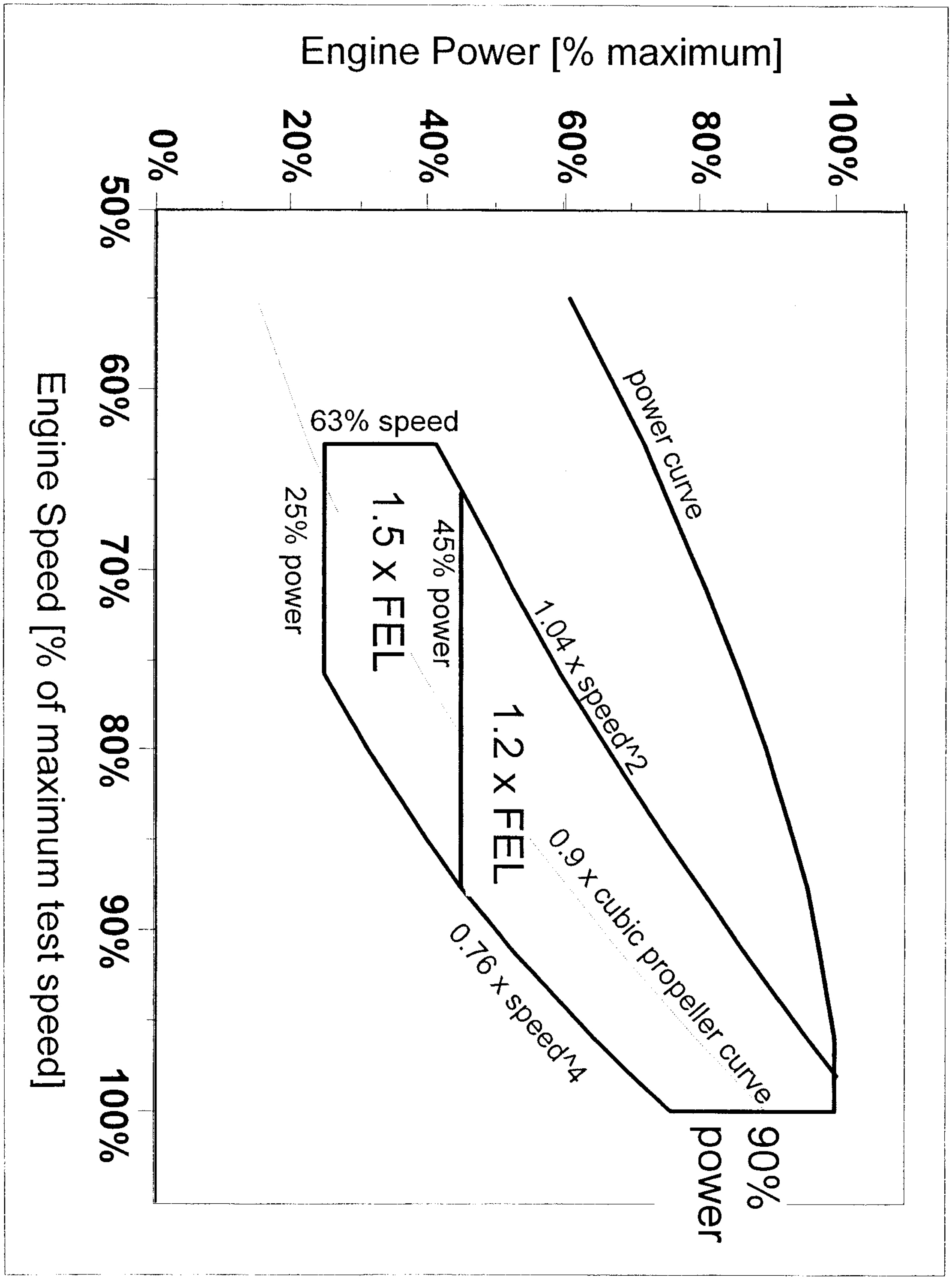

Figure B-2

(i) The Not to Exceed zone is the region above the curve power = 0.85 × SPD^2, excluding all operation below 25% of maximum power at rated speed and excluding all operation below 63% of maximum test speed.

(ii) This zone is divided into two subzones, one above and one below 45% of maximum power at rated speed.

(iii) SPD in paragraph (b)(3)(i) of this section refers to percent of maximum test speed.

(iv) See Figure B–3 for an illustration of this Not to Exceed zone:

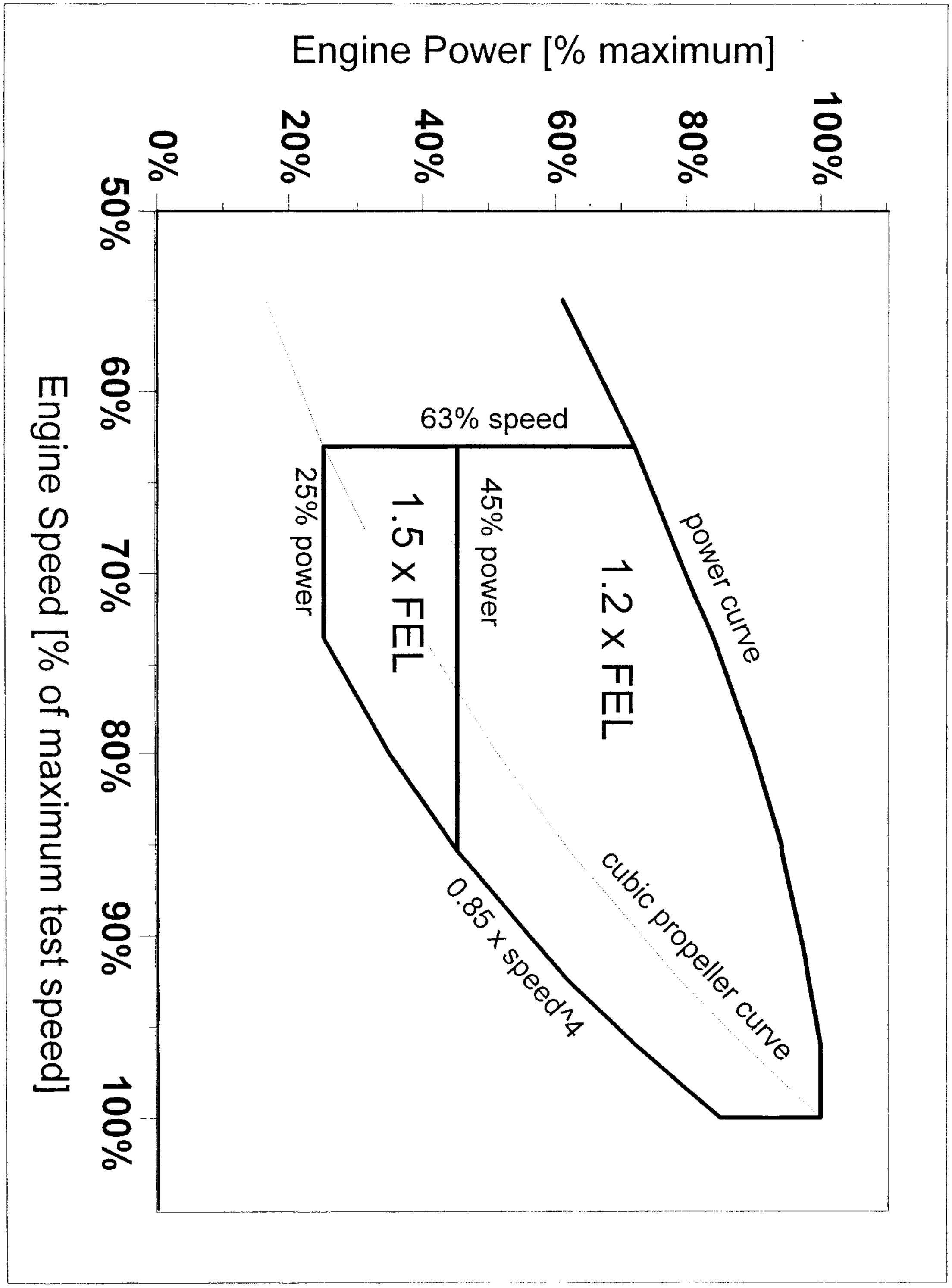

Figure B-3

(4) For engines certified using the duty cycle specified in § 94.105(b)(1), the Not to Exceed Zone is defined as any load greater than or equal to 25 percent of maximum power at rated speed, and at any speed at which the engine operates in use.

(c)(1) Upon request by the manufacturer, the Administrator may specify a narrower Not to Exceed Zone for an engine family at the time of certification, provided that the narrower Not to Exceed Zone includes all speeds greater than 63 percent of maximum test speed and loads greater than 25 percent of maximum power at rated speed at which the engines are expected to normally operate in use.

(2) At the time of certification, the Administrator may specify, or require the manufacturer to specify, a broader Not to Exceed Zone for an engine family, provided that the broader Not to Exceed Zone includes only speeds greater than 63 percent of maximum test speed and loads greater than 25 percent of maximum power at rated speed at which the engines are expected to normally operate in use.

(d) Testing conducted to determine compliance with the exhaust emission requirements of § 94.8(e) may be conducted at any ambient air temperature or humidity outside the ranges specified in paragraph (a)(2) of this section, provided that emission measurements are corrected to be equivalent to measurements within the ranges specified in paragraph (a)(2) of this section. Correction of emission measurements made in accordance with this paragraph (d) shall be made in accordance with good engineering practice. The measurements shall be corrected to be within the range using the minimum possible correction.

(e) Testing conducted under this section may not include engine starting.

§ 94.107 Determination of maximum test speed.

(a) *Overview.* This section specifies how to determine maximum test speed from a lug curve. This maximum test speed is used in §§ 94.105 and 94.106 (including the tolerances for engine speed specified in § 94.105).

(b) *Generation of lug curve.* Prior to beginning emission testing, generate maximum measured brakepower versus engine speed data points using the applicable method specified in 40 CFR 86.1332. These data points form the lug curve. It is not necessary to generate the entire lug curve. For the portion of the curve where power increases with increasing speed, it is not necessary to generate points with power less than 90 percent of the maximum power value. For the portion of the curve where power decreases with increasing speed, it is not necessary to generate points with power less than 75 percent of the maximum power value.

(c) *Normalization of lug curve.* (1) Identify the point (power and speed) on the lug curve at which maximum power occurs.

(2) Normalize the power values of the lug curve by dividing them by the maximum power value identified in paragraph (b)(1) of this section, and multiplying the resulting values by 100.

(3) Normalize the engine speed values of the lug curve by dividing them by the speed at which maximum power occurs, which is identified in paragraph (b)(1) of this section, and multiplying the resulting values by 100.

(4) Maximum engine power is located on the normalized lug curve at 100 percent power and 100 percent speed.

(d) *Determination of maximum test speed.* Calculate the maximum test speed from the speedfactor analysis described in this paragraph (d).

(1) For a given combination of engine power and speed (i.e., a given power/speed point), the speedfactor is the distance to the normalized power/speed point from the zero power, zero speed point. The value of the speedfactor is defined as:

$$\text{Speedfactor} = \sqrt{(\text{power})^2 + (\text{speed})^2}$$

(2) Calculate speedfactors for the power/speed data points on the lug curve, and determine the maximum value.

(3) Maximum test speed is the speed at which the maximum value for the speedfactor occurs.

(e) For constant-speed engines, rated speed is the maximum test speed.

§ 94.108 Test fuels.

(a) *Distillate diesel test fuel.* (1) The diesel fuels for testing marine engines designed to operate on distillate diesel fuel shall be clean and bright, with pour and cloud points adequate for operability. The diesel fuel may contain nonmetallic additives as follows: cetane improver, metal deactivator, antioxidant, dehazer, antirust, pour depressant, dye, dispersant, and biocide. The diesel fuel shall also meet the specifications (as determined using methods incorporated by reference at § 94.5) in Table B–5, or substantially equivalent specifications approved by the Administrator, as follows:

TABLE B–5.—FEDERAL TEST FUEL SPECIFICATIONS

Item	Procedure (ASTM)[1]	Value (Type 2–D)
Cetane	D 613–95	40–48
Distillation Range:		
IBP, °C	D 86–97	171–204
10% point, °C	D 86–97	204–238
50% point, °C	D 86–97	243–282
90% point, °C	D 86–97	293–332
EP, °C	D 86–97	321–366
Gravity, API	D 287–92	32–37
Total Sulfur, weight%	D 129–95 or D 2622–98	0.03–0.80
Hydrocarbon composition:		
Aromatics, % vol.	D 1319–98 or D 5186–96	10[2]
Paraffins, Naphthalenes, Olefins	D 1319–98	[3]
Flashpoint, °C (minimum)	D 93–97	54
Viscosity @ 38 °C, Centistokes	D 445–97	2.0–3.2

[1] All ASTM procedures in this table have been incorporated by reference. See § 94.6.

[2] Minimum.

[3] Remainder.

(2) Other diesel fuels may be used for testing provided:

(i) They are commercially available; and

(ii) Information, acceptable to the Administrator, is provided to show that only the designated fuel would be used in service; and

(iii) Use of a fuel listed under paragraph (a)(1) of this section would have a detrimental effect on emissions or durability; and

(iv) Written approval from the Administrator of the fuel specifications is provided prior to the start of testing.

(3) The specification of the fuel to be used under paragraphs (a)(1), and (a)(2) of this section shall be reported in the application for certification.

(b) *Other fuel types.* For engines that are designed to be capable of using a type of fuel (or mixed fuel) instead of or in addition to distillate diesel fuel (e.g., natural gas, methanol, or nondistillate diesel), and that are expected to use that type of fuel (or mixed fuel) in service, a commercially available fuel of that type shall be used for exhaust emission testing. The manufacturer shall propose for the Administrator's approval a set of test fuel specifications that take into account the engine design and the properties of commercially available fuels. The Administrator may require testing on each fuel if it is designed to operate on more than one fuel. These test fuel specifications shall be reported in the application for certification.

(c) *Service accumulation fuel.* Fuel used for service accumulation shall be representative of the typical fuel expected to be used by the engines in service.

(d) *Correction for sulfur.* (1) Particulate emission measurements from engines without exhaust aftertreatment obtained using a diesel fuel containing more than 0.40 weight percent sulfur may be adjusted to a sulfur content of 0.40 weight percent.

(2) Adjustments to the particulate measurement shall be made using the following equation:

$$PMadj=PM-[BSFC*0.0917*(FSF-0.0040)]$$

Where:

PMadj=adjusted measured PM level [g/kW-hr]

PM=measured weighted PM level [g/KW-hr]

BSFC=measured brake specific fuel consumption [g/KW-hr]

FSF=fuel sulfur weight fraction

Subpart C—Certification Provisions

§ 94.201 Applicability.

The requirements of this subpart are applicable to manufacturers of engines subject to the standards of subpart A of this part.

§ 94.202 Definitions.

The definitions of subpart A of this part apply to this subpart.

§ 94.203 Application for certification.

(a) For each engine family that complies with all applicable standards and requirements, the manufacturer shall submit to the Administrator a completed application for a certificate of conformity.

(b) The application shall be approved and signed by the authorized representative of the manufacturer.

(c) The application shall be updated and corrected by amendment, where necessary, as provided for in § 94.210 to accurately reflect the manufacturer's production.

(d) Each application shall include all the following information:

(1)(i) A description of the basic engine design, including but not limited to, the engine family specifications, the provisions of which are contained in § 94.204.

(ii) A list of distinguishable configurations to be included in the engine family.

(2) An explanation of how the emission control system operates, including detailed descriptions of:

(i) All emission control system components;

(ii) The injection timing map or maps (i.e., degrees before or after top-dead-center), and any functional dependence of such timing on other operational parameters (e.g., engine coolant temperature or engine speed);

(iii) Each auxiliary emission control device (AECD); and

(iv) All fuel system components to be installed on any production or test engine(s).

(3) A description of the test engine.

(4) Special or alternate test procedures, if applicable.

(5) A description of the operating cycle and the period of operation necessary to accumulate service hours on the test engine and stabilize emission levels.

(6) A description of all adjustable operating parameters (e.g., injection timing and fuel rate), including all the following:

(i) The nominal or recommended setting and the associated production tolerances.

(ii) The physically adjustable range (Note: if this is different than the intended adjustable range, describe why these are different).

(iii) The limits or stops used to limit adjustable ranges.

(iv) Production tolerances of the limits or stops used to establish each physically adjustable range.

(v) Information relating to the reason that the physical limits or stops used to establish the physically adjustable range of each parameter, or any other means used to inhibit adjustment, are the most effective means possible of preventing adjustment of parameters to settings outside the manufacturer's specified adjustable ranges on in-use engines.

(7) For families participating in the averaging, banking, and trading program, the information specified in subpart D of this part.

(8) Projected U.S.-directed production volume information for each configuration.

(9) A description of the test equipment and fuel used.

(10) All test data obtained by the manufacturer on each test engine.

(11) The intended useful life period for the engine family, in accordance with § 94.9(a).

(12) The intended deterioration factors for the engine family, in accordance with § 94.218.

(13) All information required for EPA to interpret all messages and parameters broadcast on an engine's controller area network, including but not limited to message or parameter identification, scaling, limit, offset, and transfer function. (The manufacturer may reference publicly released controller area network standards where applicable. The format of this information shall be provided in a format similar to publicly released documents pertaining to controller area network standards.)

(14) A statement that the all the engines included in the engine family comply with the Not To Exceed standards specified in § 94.8(e) when operated under all conditions which may reasonably be expected to be encountered in normal operation and use; the manufacturer also must provide a detailed description of all testing, engineering analyses, and other information which provides the basis for this statement.

(15) An unconditional statement certifying that all engines included in the engine family comply with all requirements of this part and the Clean Air Act.

(16) A statement indicating duty-cycle and application of the engine (e.g., used to propel planing vessels, use to propel vessels with variable-pitch propellers, constant-speed auxiliary, etc.).

(e) At the Administrator's request, the manufacturer shall supply such additional information as may be required to evaluate the application.

(f)(1) If the manufacturer submits some or all of the information specified in paragraph (d) of this section in advance of its full application for certification, the Administrator shall review the information and make the determinations required in § 94.208 (d) within 90 days of the manufacturer's submittal.

(2) The 90-day decision period is exclusive of any elapsed time during which EPA is waiting for additional information requested from a manufacturer regarding an adjustable parameter (the 90-day period resumes upon receipt of the manufacturer's response). For example, if EPA requests additional information 30 days after the manufacturer submits information under paragraph (f)(1) of this section, then the Administrator would make a determination within 60 days of the receipt of the requested information from the manufacturer.

(g)(1) The Administrator may modify the information submission requirements of paragraph (d) of this section, provided that all of the information specified therein is maintained by the manufacturer as required by § 94.215, and amended, updated, or corrected as necessary.

(2) For the purposes of this paragraph (g), § 94.215 includes all information specified in paragraph (d) of this section, whether or not such information is actually submitted to the Administrator for any particular model year.

(3) The Administrator may review a manufacturer's records at any time. At the Administrator's discretion, this review may take place either at the manufacturer's facility or at another facility designated by the Administrator.

§ 94.204 Designation of engine families.

This section specifies the procedure and requirements for grouping of engines into engine families.

(a) Manufacturers shall divide their engines into groupings of engines which are expected to have similar emission characteristics throughout their useful life. Each group shall be defined as a separate engine family.

(b) For Category 1 marine engines, the following characteristics distinguish engine families:

(1) Fuel;

(2) Cooling method (including cooling medium);

(3) Method of air aspiration;

(4) Method of exhaust aftertreatment (for example, catalytic converter or particulate trap);

(5) Combustion chamber design;

(6) Bore;

(7) Stroke;

(8) Number of cylinders, (engines with aftertreatment devices only);

(9) Cylinder arrangement (engines with aftertreatment devices only); and

(10) Fuel system configuration

(c) For Category 2 marine engines, the following characteristics distinguish engine families:

(1) The combustion cycle (e.g., diesel cycle);

(2) The type of engine cooling employed (air-cooled or water-cooled), and procedure(s) employed to maintain engine temperature within desired limits (thermostat, on-off radiator fan(s), radiator shutters, etc.);

(3) The bore and stroke dimensions;

(4) The approximate intake and exhaust event timing and duration (valve or port);

(5) The location of the intake and exhaust valves (or ports);

(6) The size of the intake and exhaust valves (or ports);

(7) The overall injection, or as appropriate ignition, timing characteristics (i.e., the deviation of the timing curves from the optimal fuel economy timing curve must be similar in degree);

(8) The combustion chamber configuration and the surface-to-volume ratio of the combustion chamber when the piston is at top dead center position, using nominal combustion chamber dimensions;

(9) The location of the piston rings on the piston;

(10) The method of air aspiration (turbocharged, supercharged, naturally aspirated, Roots blown);

(11) The turbocharger or supercharger general performance characteristics (e.g., approximate boost pressure, approximate response time, approximate size relative to engine displacement);

(12) The type of air inlet cooler (air-to-air, air-to-liquid, approximate degree to which inlet air is cooled);

(13) The intake manifold induction port size and configuration;

(14) The type of fuel and fuel system configuration;

(15) The configuration of the fuel injectors and approximate injection pressure;

(16) The type of fuel injection system controls (i.e., mechanical or electronic);

(17) The type of smoke control system;

(18) The exhaust manifold port size and configuration; and

(19) The type of exhaust aftertreatment system (oxidation catalyst, particulate trap), and characteristics of the aftertreatment system (catalyst loading, converter size vs engine size).

(d) Upon request by the manufacturer, engines that are eligible to be included in the same engine family based on the criteria in paragraph (b) or (c) of this section may be divided into different engine families. This request must be accompanied by information the manufacturer believes supports the use of these different engine families.

(e) Upon request by the manufacturer, the Administrator may allow engines that would be required to be grouped into separate engine families based on the criteria in paragraph (b) or (c) of this section to be grouped into a single engine family if the manufacturer demonstrates that the engines will have similar emission characteristics. This request must be accompanied by emission information supporting the appropriateness of such combined engine families.

§ 94.205 Prohibited controls, adjustable parameters.

(a) Any system installed on, or incorporated in, a new engine to enable the engine to conform to the standards contained in this part:

(1) Shall not cause a violation of the general standards of § 94.7.

(2) Shall function during all in-use operation, except as otherwise allowed by this part.

(b) Nonroad engines equipped with adjustable parameters must comply with all requirements of this subpart for any adjustment in the physically adjustable range.

(c) The Administrator may require that adjustable parameters be set to any specification within its adjustable range for certification, selective enforcement audit, or in-use testing to determine compliance with the requirements of this subpart.

(d) In specifying the adjustable range of each adjustable parameter on a new engine, the manufacturer, shall:

(1) Ensure that safe engine operating characteristics are available within that range, as required by section 202(a)(4) of the Clean Air Act, taking into consideration the production tolerances; and

(2) To the maximum extent practicable, limit the physical range of adjustability to that which is necessary for proper operation of the engine.

§ 94.206 Required information.

(a) The manufacturer shall perform the tests required by the applicable test procedures, and submit to the Administrator the information required by this section: *Provided*, that if requested by the manufacturer, the Administrator may waive any requirement of this section for testing of engines for which the required emission data are otherwise available.

(b) The manufacturer shall submit exhaust emission deterioration factors, with supporting data. The determination of the deterioration factors shall be conducted in accordance with § 94.218 to ensure that the engines covered by a certificate issued under § 94.208 will meet all of the emission standards in § 94.8 in use for the useful life of the engine.

(c) The manufacturer shall submit emission data on such engines tested in accordance with the applicable test procedures of Subpart B of this part. These data shall include zero hour data, if generated. In lieu of providing the emission data required by paragraph (a) of this section, the Administrator may, upon request by the manufacturer, allow the manufacturer to demonstrate (on the basis of previous emission tests, development tests, or other testing information) that the engine will conform with the applicable emission standards of § 94.8.

(d) The manufacturer shall submit a statement that the engines for which certification is requested conform to the requirements in § 94.7 and that the descriptions of tests performed to ascertain compliance with the general standards in § 94.7, and the data derived from such tests, are available to the Administrator upon request.

(e) The manufacturer shall submit a statement that the emission data engine used to demonstrate compliance with the applicable standards of this part is in all material respects as described in the manufacturer's application for certification; that it has been tested in accordance with the applicable test procedures utilizing the fuels and equipment described in the application for certification; and that on the basis of such tests, the engine family conforms to the requirements of this part. If, on the basis of the data supplied and any additional data as required by the Administrator, the Administrator determines that the test engine was not as described in the application for certification or was not tested in accordance with the applicable test procedures utilizing the fuels and equipment as described in the application for certification, the Administrator may make the determination that the engine does not meet the applicable standards. If the Administrator makes such a determination, he/she may withhold, suspend, or revoke the certificate of conformity under § 94.208 (c)(3)(i).

§ 94.207 Special test procedures.

(a) *Establishment of special test procedures by EPA.* The Administrator may, on the basis of written application by a manufacturer, establish special test procedures other than those set forth in this part, for any engine that the Administrator determines is not susceptible to satisfactory testing under the specified test procedures set forth in Subpart B of this part.

(b) *Use of alternate test procedures by a manufacturer.* (1) A manufacturer may elect to use an alternate test procedure, provided that it is equivalent to the specified procedures with respect to the demonstration of compliance, its use is approved in advance by the Administrator, and the basis for the equivalence with the specified test procedures is fully described in the manufacturer's application.

(2) The Administrator may reject data generated under alternate test procedures if the data do not correlate with data generated under the specified procedures.

§ 94.208 Certification.

(a) If, after a review of the application for certification, test reports and data acquired from an engine or from a development data engine, and any other information required or obtained by EPA, the Administrator determines that the application is complete and that the engine family meets the requirements of the Act and this part, he/she will issue a certificate of conformity with respect to such engine family, except as provided by paragraph (c)(3) of this section. The certificate of conformity is valid for each engine family from the date of issuance by EPA until 31 December of the model year or calendar year for which it is issued and upon such terms and conditions as the Administrator deems necessary or appropriate to ensure that the production engines covered by the certificate will meet the requirements of the Act and of this part.

(b) [Reserved]

(c)(1) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificates were issued were satisfied or excused.

(2) The Administrator will determine whether the test data included in the application represents all engines of the engine family.

(3) Notwithstanding the fact that any engine(s) may comply with other provisions of this subpart, the Administrator may withhold or deny the issuance of any certificate of conformity, or suspend or revoke any such certificate(s) which has (have) been issued with respect to any such engine(s) if:

(i) The manufacturer submits false or incomplete information in its application for certification thereof;

(ii) The manufacturer renders inaccurate any test data which it submits pertaining thereto or otherwise circumvents the intent of the Act, or of this part with respect to such engine;

(iii) Any EPA Enforcement Officer is denied access on the terms specified in § 94.215 to any facility or portion thereof which contains any of the following:

(A) An engine which is scheduled to undergo emissions testing, or which is undergoing emissions testing, or which has undergone emissions testing; or

(B) Any components used or considered for use in the construction, modification or buildup of any engine which is scheduled to undergo emissions testing, or which is undergoing emissions testing, or which has undergone emissions testing for purposes of emissions certification; or

(C) Any production engine which is or will be claimed by the manufacturer to be covered by the certificate; or

(D) Any step in the construction of the engine; or

(E) Any records, documents, reports or histories required by this part to be kept concerning any of the items listed in paragraphs (c)(3)(iii)(A) through (D) of this section; or

(iv) Any EPA Enforcement Officer is denied "reasonable assistance" (as defined in § 94.215).

(4) In any case in which a manufacturer knowingly submits false or inaccurate information or knowingly renders inaccurate or invalid any test data or commits any other fraudulent acts and such acts contribute substantially to the Administrator's decision to issue a certificate of conformity, the Administrator may deem such certificate void ab initio.

(5) In any case in which certification of an engine is to be withheld, denied, revoked or suspended under paragraph (c)(3) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 94.215 in fact occurred, the manufacturer, if it wishes to contend that, even though the violation occurred, the engine in question was not involved in the violation to a degree that would warrant withholding, denial, revocation or suspension of certification under paragraph (c)(3) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(6) Any revocation, suspension, or voiding of certification under paragraph (c)(3) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 94.216; and

(ii) Extend no further than to forbid the introduction into commerce of engines previously covered by the certification which are still in the hands of the manufacturer, except in cases of such fraud or other misconduct that makes the certification invalid ab initio.

(7) The manufacturer may request, within 30 days of receiving notification, that any determination made by the Administrator under paragraph (c)(3) of this section to withhold or deny certification be reviewed in a hearing conducted in accordance with § 94.216. The request shall be in writing, signed by an authorized representative of the manufacturer and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objections. If the Administrator finds, after a review of the request and supporting data, that the request raises a substantial factual issue, he/she will grant the request with respect to such issue.

(d) In approving an application for certification, the Administrator may specify or require the manufacturer to specify:

(1) A broader range of adjustability than recommended by the manufacturer for those engine parameters which are subject to adjustment, if the Administrator determines that it is not reasonable to expect the parameter to be kept adjusted within the recommended range in use;

(2) A longer useful life period, if the Administrator determines that the useful life of the engines in the engine family, as defined in § 94.2, is longer than the period specified by the manufacturer;

(3) Larger deterioration factors, if the Administrator determines that the deterioration factors specified by the manufacturer do not meet the requirements of § 94.218; and/or

(4) A broader Not to Exceed Zone subject to the provisions of § 94.106(b).

(e) Within 30 days following receipt of notification of the Administrator's determinations made under paragraph (d) of this section, the manufacturer may request a hearing on the Administrator's determinations. The request shall be in writing, signed by an authorized representative of the manufacturer and shall include a statement specifying the manufacturer's objections to the Administrator's determinations and data in support of such objections. If, after review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, the manufacturer shall be provided with a hearing in accordance with § 94.216 with respect to such issue.

§ 94.209 Special provisions for post-manufacture marinizers.

(a) *Broader engine families.* To be eligible to use the provisions of this paragraph (a), the manufacturer must demonstrate that it is a post-manufacture marinizer as defined in § 94.2 and that the base engines used for modification shall have a valid certificate of conformity issued under 40 CFR part 89 or 40 CFR part 92 or the heavy-duty engine provisions of 40 CFR part 86.

(1) In lieu of the requirements of § 94.204, an eligible manufacturer may group all its engine models into an engine family consisting of engines within a single category of engines that have similar emission deterioration characteristics.

(2) The manufacturer remains subject to all provisions of this part other than § 94.204 for engines using the engine family defined in paragraph (a)(1) of this section.

(b) *Hardship relief.* Post-manufacture marinizers may take any of the otherwise prohibited actions identified in § 94.1103(a)(1) if approved in advance by the Administrator, and subject to the following requirements:

(1) Application for relief must be submitted to the Designated Officer in writing prior to the earliest date in which the applying manufacturer would be in violation of § 94.1103. The manufacturer must submit evidence showing that the requirements for approval have been met.

(2) The conditions causing the impending violation must not be substantially the fault of the applying manufacturer.

(3) The conditions causing the impending violation must be such that the applying manufacturer will experience serious economic hardship if relief is not granted.

(4) The applying manufacturer must demonstrate that no other allowances under this part will be available to avoid the impending violation.

(5) Any relief may not exceed one year beyond the date relief is granted.

(6) The Administrator may impose other conditions on the granting of relief including provisions to recover the lost environmental benefit.

§ 94.210 Amending the application and certificate of conformity.

(a) The manufacturer shall notify the Administrator when changes to information required to be described in the application for certification are to be made to a product line covered by a certificate of conformity. This notification shall include a request to amend the application or the existing certificate of conformity. Except as provided in paragraph (e) of this section, no manufacturer shall make said changes or produce said engines prior to receiving approval from the Administrator.

(b) A manufacturer's request to amend the application or the existing certificate of conformity shall include the following information:

(1) A full description of the change to be made in production, or of the engines to be added;

(2) Engineering evaluations or data showing that the engines as modified or added will comply with all applicable emission standards; and

(3) A determination whether the manufacturer's original test fleet selection is still appropriate, and if the original test fleet selection is determined not to be appropriate, test fleet selection(s) representing the engines changed or added which would have been required if the engines had been included in the original application for certification.

(c) The Administrator may require the manufacturer to perform tests on the engine representing the engine to be added or changed.

(d)(1) Based on the description of the amendment and data derived from such testing as the Administrator may require or conduct, the Administrator will determine whether the change or addition would still be covered by the certificate of conformity then in effect.

(2) If the Administrator determines that the change or new engine(s) meets the requirements of this part and the Act, the appropriate certificate of conformity shall be amended.

(3) If the Administrator determines that the changed engine(s) does not meet the requirements of this part and the Act, the certificate of conformity will not be amended. The Administrator shall provide a written explanation to the manufacturer of the decision not to amend the certificate. The manufacturer may request a hearing on a denial.

(e) A manufacturer may make changes in or additions to production engines concurrently with the notification to the Administrator, as required by paragraph (a) of this section, if the manufacturer complies with the following requirements:

(1) In addition to the information required in paragraph (b) of this section, the manufacturer shall supply supporting documentation, test data, and engineering evaluations as appropriate to demonstrate that all

affected engines will still meet applicable emission standards.

(2) If, after a review, the Administrator determines additional testing is required, the manufacturer shall provide the required test data within 30 days or cease production of the affected engines.

(3) If the Administrator determines that the affected engines do not meet applicable requirements, the Administrator will notify the manufacturer to cease production of the affected engines and to recall and correct at no expense to the owner all affected engines previously produced.

(4) Election to produce engines under this paragraph (e) will be deemed to be a consent to recall all engines that the Administrator determines do not meet applicable standards and to cause such nonconformity to be remedied at no expense to the owner.

§ 94.211 Emission-related maintenance instructions for purchasers.

(a) The manufacturer shall furnish or cause to be furnished to the ultimate purchaser of each new engine, subject to the standards prescribed in § 94.8, written instructions for the proper maintenance and use of the engine as are reasonable and necessary to assure the proper functioning of the emissions control system, consistent with the applicable provisions of paragraph (b) of this section.

(1) The maintenance and use instructions required by this section shall be clear and easily understandable.

(2) The maintenance instructions required by this section shall contain a general description of the documentation that would demonstrate for warranty purposes that the ultimate purchaser or any subsequent owner had complied with the instructions.

(b)(1) The manufacturer must provide in boldface type on the first page of the written maintenance instructions notice that maintenance, replacement, or repair of the emission control devices and systems may be performed by any engine repair establishment or individual.

(2) The instructions under paragraph (b)(1) of this section will not include any condition on the ultimate purchaser's or owner's using, in connection with such engine, any component or service (other than a component or service provided without charge under the terms of the purchase agreement) which is identified by brand, trade, or corporate name. Such instructions also will not directly or indirectly distinguish between service performed by any other service establishments with which such manufacturer has a commercial relationship and service performed by independent vessel or engine repair facilities with which such manufacturer has no commercial relationship.

(3) The prohibition of paragraph (b)(2) of this section may be waived by the Administrator if:

(i) The manufacturer demonstrates to the Administrator's satisfaction that the engine will function properly only if the component or service so identified is used in connection with such engine; and

(ii) The Administrator finds that such a waiver is in the public interest.

(c) The manufacturer shall provide to the Administrator, no later than the time of the submission required by § 94.203, a copy of the emission-related maintenance instructions that the manufacturer proposes to supply to the ultimate purchaser or owner in accordance with this section. The Administrator will review such instructions to determine whether they are reasonable and necessary to ensure the proper functioning of the engine's emission control systems. If the Administrator determines that such instructions are not reasonable and necessary to ensure the proper functioning of the emission control systems, he/she may disapprove the application for certification or may require that the manufacturer modify the instructions.

(d) Any revision to the maintenance instructions which will affect emissions shall be supplied to the Administrator at least 30 days before being supplied to the ultimate purchaser or owner unless the Administrator consents to a lesser period of time, and is subject to the provisions of § 94.210.

(e) This paragraph (e) specifies emission-related scheduled maintenance for purposes of obtaining durability data for marine engines. The maintenance intervals specified in this paragraph are minimum intervals.

(1) All emission-related scheduled maintenance for purposes of obtaining durability data must occur at the same or longer hours of use intervals as those specified in the manufacturer's maintenance instructions furnished to the ultimate purchaser of the engine under paragraph (a) of this section. This maintenance schedule may be updated as necessary throughout the testing of the engine, provided that no maintenance operation is deleted from the maintenance schedule after the operation has been performed on the test equipment or engine.

(2) Any emission-related maintenance which is performed on equipment, engines, subsystems, or components must be technologically necessary to ensure in-use compliance with the emission standards. The manufacturer must submit data which demonstrate to the Administrator that all of the emission-related scheduled maintenance which is to be performed is technologically necessary. Scheduled maintenance must be approved by the Administrator prior to being performed or being included in the emission-related maintenance instructions provided to the purchasers under paragraph (a) of this section.

(i) The Administrator may require longer maintenance intervals than those listed in paragraphs (e)(3) and (e)(4) of this section where the listed intervals are not technologically necessary.

(ii) The Administrator may allow manufacturers to specify shorter maintenance intervals than those listed in paragraphs (e)(3) and (e)(4) of this section where technologically necessary for Category 2 engines.

(3) The adjustment, cleaning, repair, or replacement of items listed in paragraphs (e)(3)(i) through (e)(3)(iii) of this section shall occur at 1,500 hours of use and at 1,500-hour intervals thereafter.

(i) Exhaust gas recirculation system-related filters and coolers.

(ii) Positive crankcase ventilation valve.

(iii) Fuel injector tips (cleaning only).

(4) The adjustment, cleaning and repair of items in paragraphs (e)(4)(i) through (e)(4)(vii) of this section shall occur at 3,000 hours of use and at 3,000-hour intervals thereafter for engines with per-cylinder displacement less than 1.2 liters, or at 4,500-hour intervals thereafter for engines with per-cylinder displacement greater than or equal to 1.2 liters.

(i) Fuel injectors.

(ii) Turbocharger.

(iii) Electronic engine control unit and its associated sensors and actuators.

(iv) Particulate trap or trap-oxidizer system (including related components).

(v) Exhaust gas recirculation system (including all related control valves and tubing), except as otherwise provided in paragraph (e)(3)(i) of this section.

(vi) Catalytic convertor.

(vii) Any other add-on emission-related component (*i.e.*, a component whose sole or primary purpose is to reduce emissions or whose failure will significantly degrade emission control and whose function is not integral to the design and performance of the engine).

(f) Scheduled maintenance not related to emissions which is reasonable and technologically necessary (*e.g.*, oil change, oil filter change, fuel filter change, air filter change, cooling system maintenance, adjustment of idle speed, governor, engine bolt torque, valve lash, injector lash, timing, lubrication of the exhaust manifold heat control valve, *etc.*) may be performed on durability engines at the least frequent intervals recommended by the manufacturer to the ultimate purchaser, (*e.g.*, not the intervals recommended for severe service).

(g) Adjustment of engine idle speed on emission data engines may be performed once before the low-hour emission test point. Any other engine, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement on emission data vehicles shall be performed only with advance approval of the Administrator.

(h) Equipment, instruments, or tools may not be used to identify malfunctioning, maladjusted, or defective engine components unless the same or equivalent equipment, instruments, or tools will be available to dealerships and other service outlets and are:

(1) Used in conjunction with scheduled maintenance on such components; or

(2) Used subsequent to the identification of an engine malfunction, as provided in paragraph (e) of this section for emission data engines; or

(3) Specifically authorized by the Administrator.

(i) All test data, maintenance reports, and required engineering reports shall be compiled and provided to the Administrator in accordance with § 94.215.

(j)(1) The components listed in paragraphs (j)(1)(i) through (j)(1)(vi) of this section are defined as critical emission-related components.

(i) Catalytic convertor.

(ii) Electronic engine control unit and its associated sensors and actuators.

(iii) Exhaust gas recirculation system (including all related filters, coolers, control valves, and tubing).

(iv) Positive crankcase ventilation valve.

(v) Particulate trap or trap-oxidizer system.

(vi) Any other add-on emission-related component (i.e., a component whose sole or primary purpose is to reduce emissions or whose failure will significantly degrade emission control and whose function is not integral to the design and performance of the engine).

(2) All critical emission-related scheduled maintenance must have a reasonable likelihood of being performed in use. The manufacturer must show the reasonable likelihood of such maintenance being performed in-use. Critical emission-related scheduled maintenance items which satisfy one of the conditions defined in paragraphs (j)(2)(i) through (j)(2)(vi) of this section will be accepted as having a reasonable likelihood of being performed in use.

(i) Data are presented which establish for the Administrator a connection between emissions and engine performance such that as emissions increase due to lack of maintenance, vehicle performance will simultaneously deteriorate to a point unacceptable for typical operation.

(ii) Survey data are submitted which adequately demonstrate to the Administrator with an 80 percent confidence level that 80 percent of such engines already have this critical maintenance item performed in-use at the recommended interval(s).

(iii) A clearly displayed visible signal system approved by the Administrator is installed to alert the equipment operator that maintenance is due. A signal bearing the message ‘‘maintenance needed’’ or ‘‘check engine,’’ or a similar message approved by the Administrator, shall be actuated at the appropriate usage point or by component failure. This signal must be continuous while the engine is in operation and not be easily eliminated without performance of the required maintenance. Resetting the signal shall be a required step in the maintenance operation. The method for resetting the signal system shall be approved by the Administrator. The system must not be designed to deactivate upon the end of the useful life of the engine or thereafter.

(iv) A manufacturer may desire to demonstrate through a survey that a critical maintenance item is likely to be performed without a visible signal on a maintenance item for which there is no prior in-use experience without the signal. To that end, the manufacturer may in a given model year market up to 200 randomly selected engines per critical emission-related maintenance item without such visible signals, and monitor the performance of the critical maintenance item by the owners to show compliance with paragraph (j)(2)(ii) of this section. This option is restricted to two consecutive model years and may not be repeated until any previous survey has been completed. If the critical maintenance involves more than one engine family, the sample will be sales weighted to ensure that it is representative of all the families in question.

(v) The manufacturer provides the maintenance free of charge, and clearly informs the customer that the maintenance is free in the instructions provided under paragraph (a) of this section.

(vi) The manufacturer uses any other method which the Administrator approves as establishing a reasonable likelihood that the critical maintenance will be performed in-use.

(3) Visible signal systems used under paragraph (j)(2)(iii) of this section are considered an element of design of the emission control system. Therefore, disabling, resetting, or otherwise rendering such signals inoperative without also performing the indicated maintenance procedure is a prohibited act.

§ 94.212 Labeling.

(a) *General requirements.* (1) Each new engine covered by a certificate of conformity under § 94.208 shall be labeled by the manufacturer in the manner described in this paragraph (b) of this section at the time of manufacture.

(2) Each new marine engine modified from a base engine by post-manufacture marinizers in accordance with the provisions of § 94.209 (b) and covered by a certificate of conformity under § 94.208 shall be labeled by the PMM in the manner described in paragraph (b) of this section.

(b) *Engine labels.* Engine labels meeting the specifications of this section shall be applied to every engine by the manufacturer at the point of original manufacture. Engine labels shall be permanent and legible and shall be affixed to the engine in a position in which it will be readily visible after installation of the engine in the vessel. The label shall be attached to an engine part necessary for normal operation and not normally requiring replacement during the useful life of the engine. The label shall be affixed by the manufacturer in such manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such engine. The label may be not be made up of more than one piece without the advance approval of the Administrator. The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(1) The label heading: Marine Engine Emission Control Information.

(2) Full corporate name and trademark of the manufacturer.

(3) The model year.

(4) The per-cylinder displacement of the engine.

(5) Engine family and configuration identification.

(6) A prominent unconditional statement of compliance with U.S. Environmental Protection Agency regulations which apply to marine engines designated by the parameters of paragraphs 5(b)(2)(v)(A) through (E) of this section.

(7) The useful life of the engine.

(8) The standards and/or FELs to which the engine was certified.

(9) Engine tune-up specifications and adjustments, as recommended by the manufacturer in accordance with the applicable emission standards, including but not limited to idle speeds(s), injection timing, valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer.

(10) The application for which the engine family is certified. (For example: constant-speed auxiliary, variable-speed propulsion engines used with fixed-pitch propellers, etc.)

(c) The provisions of this section shall not prevent a manufacturer from also providing on the label any other information that such manufacturer deems necessary for, or useful to, the proper operation and satisfactory maintenance of the vessel or engine.

(d) Engines certified under the voluntary standards described in § 94.8(f) to be designated as Blue Sky Series engines must contain the statement on the label: ''Blue Sky Series''.

(e) If an engine can be modified to operate on residual fuel, but has not been certified to meet the standards on such a fuel, it must contain the statement on the label: ''THIS ENGINE IS CERTIFIED FOR OPERATION ONLY WITH DISTILLATE DIESEL FUEL. MODIFYING THE ENGINE TO OPERATE ON RESIDUAL FUEL MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTIES.'' The Administrator may approve alternate language.

§ 94.213 Submission of engine identification numbers.

(a) Upon request of the Administrator, the manufacturer of any engine covered by a certificate of conformity shall, within 30 days of receipt of such request, identify by engine identification number, the engines covered by the certificate of conformity.

(b) The manufacturer of any engines covered by a certificate of conformity shall provide to the Administrator, within 60 days of the issuance of a certificate of conformity, an explanation of the elements in any engine identification coding system in sufficient detail to enable the Administrator to identify those engines which are covered by a certificate of conformity.

§ 94.214 Production engines.

Any manufacturer obtaining certification under this part shall supply to the Administrator, upon his/her request, a reasonable number of production engines, as specified by the Administrator. The engines shall be representative of the engines, emission control systems, and fuel systems offered and typical of production engines available for sale or use under the certificate. These engines shall be supplied for testing at such time and place and for such reasonable periods as the Administrator may require.

§ 94.215 Maintenance of records; submittal of information; right of entry.

(a) Any manufacturer subject to any of the standards or procedures prescribed in this subpart shall establish, maintain and retain the following adequately organized and indexed records:

(1) General records. The records required to be maintained by this paragraph (a) shall consist of:

(i) Identification and description of all certification engines for which testing is required under this subpart.

(ii) A description of all emission control systems which are installed on or incorporated in each certification engine.

(iii) A description of all procedures used to test each such certification engine.

(iv) A copy of all applications for certification, filed with the Administrator.

(2) Individual records. (i) A brief history of each engine used for certification under this subpart including:

(A) In the case where a current production engine is modified for use as a certification engine, a description of the process by which the engine was selected and of the modifications made. In the case where the certification engine is not derived from a current production engine, a general description of the buildup of the engine (*e.g.*, whether experimental heads were cast and machined according to supplied drawings). In the cases in the previous two sentences, a description of the origin and selection process for fuel system components, ignition system components (as applicable), intake air pressurization and cooling system components, cylinders, pistons and piston rings, exhaust smoke control system components, and exhaust aftertreatment devices as applicable, shall be included. The required descriptions shall specify the steps taken to assure that the certification engine, with respect to its engine, drivetrain, fuel system, emission control system components, exhaust aftertreatment devices, or any other devices or components as applicable, that can reasonably be expected to influence exhaust emissions will be representative of production engines and that either: all components and/or engine, construction processes, component inspection and selection techniques, and assembly techniques employed in constructing such engines are reasonably likely to be implemented for production engines; or that they are as close as practicable to planned construction and assembly process.

(B) A complete record of all emission tests performed (except tests performed by EPA directly), including test results, the date and purpose of each test, and the number of hours accumulated on the engine.

(C) A record and description of all maintenance and other servicing performed, giving the date of the maintenance or service and the reason for it.

(D) A record and description of each test performed to diagnose engine or emission control system performance, giving the date and time of the test and the reason for it.

(E) A brief description of any significant events affecting the engine during the period covered by the history and not described by an entry under one of the previous headings, including such extraordinary events as accidents involving the engine or dynamometer runaway.

(ii) Each such history shall be started on the date that the first of any of the selection or buildup activities in paragraph (a)(2)(i)(A) of this section occurred with respect to the certification engine and shall be kept in a designated location.

(3) All records, other than routine emission test records, required to be maintained under this subpart shall be retained by the manufacturer for a period of 8 years after issuance of all certificates of conformity to which they relate. Routine emission test records shall be retained by the manufacturer for a period of one (1) year after issuance of all certificates of conformity to which they relate. Records may be retained as hard copy or reduced to computer disks, etc., depending on the record retention procedures of the manufacturer: *Provided*, that in every case all the information contained in the hard copy shall be retained.

(4) Nothing in this section limits the Administrator's discretion in requiring the manufacturer to retain additional

records or submit information not specifically required by this section.

(5) Pursuant to a request made by the Administrator, the manufacturer shall submit to him/her the information that is required to be retained.

(6) EPA may void a certificate of conformity *ab initio* for an engine family for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

(b) The manufacturer of engines subject to any of the standards prescribed in this part shall submit to the Administrator, at the time of issuance by the manufacturer, copies of all instructions or explanations regarding the use, repair, adjustment, maintenance, or testing of such engine, relevant to the control of crankcase, or exhaust emissions issued by the manufacturer, for use by other manufacturers, assembly plants, distributors, dealers, owners and operators. Any material not translated into the English language need not be submitted unless specifically requested by the Administrator.

(c) Any manufacturer participating in averaging, banking and trading program of subpart D of this part must comply with the maintenance of records requirements of § 94.308.

(d)(1) Any manufacturer who has applied for certification of a new engine subject to certification testing under this subpart shall admit or cause to be admitted any EPA Enforcement Officer during operating hours on presentation of credentials to any of the following:

(i) Any facility where any such tests or any procedures or activities connected with such test are or were performed;

(ii) Any facility where any engine which is being tested (or was tested, or is to be tested) is present;

(iii) Any facility where any construction process or assembly process used in the modification or buildup of such an engine into a certification engine is taking place or has taken place; or

(iv) Any facility where any record or other document relating to any of the activities listed in this paragraph (d)(1).

(2) Upon admission to any facility referred to in paragraph (d)(1) of this section, any EPA Enforcement Officer shall be allowed:

(i) To inspect and monitor any part or aspect of such procedures, activities and testing facilities including, but not limited to, monitoring engine preconditioning, emissions tests, service accumulation, maintenance, and engine storage procedures, and to verify correlation or calibration of test equipment;

(ii) To inspect and make copies of any such records, designs, or other documents, including those records specified in Subpart D of this part; and

(iii) To inspect and/or photograph any part or aspect of any such certification engine and any components to be used in the construction thereof.

(3) In order to allow the Administrator to determine whether or not production engines, conform to the conditions upon which a certificate of conformity has been issued, or conform in all material respects to the design specifications applicable to those engines, as described in the application for certification for which a certificate of conformity has been issued, any manufacturer shall admit any EPA Enforcement Officer on presentation of credentials to:

(i) Any facility where any document, design or procedure relating to the translation of the design and construction of engines and emission related components described in the application for certification or used for certification testing into production engines is located or carried on;

(ii) Any facility where any engines to be introduced into commerce are manufactured; and

(iii) Any facility where records specified this section are located.

(4) On admission to any such facility referred to in paragraph (d)(3) of this section, any EPA Enforcement Officer shall be allowed:

(i) To inspect and monitor any aspects of such manufacture and other procedures;

(ii) To inspect and make copies of any such records, documents or designs;

(iii) To inspect and photograph any part or aspect of any such engine(s) and any component used in the assembly thereof that are reasonably related to the purpose of his/her entry; and

(iv) To inspect and make copies of any records and documents specified in this section.

(5) Any EPA Enforcement Officer shall be furnished by those in charge of a facility being inspected with such reasonable assistance as he/she may request to help him/her discharge any function listed in this part. Each applicant for or recipient of certification is required to cause those in charge of a facility operated for its benefit to furnish such reasonable assistance without charge to EPA whether or not the applicant controls the facility.

(6) The duty to admit or cause to be admitted any EPA Enforcement Officer applies to any facility involved in the manufacturing or assembling of engines, whether or not the manufacturer owns or controls the facility in question and applies both to domestic and to foreign manufacturers and facilities. EPA will not attempt to make any inspections which it has been informed that local law forbids. However, if local law makes it impossible to do what is necessary to insure the accuracy of data generated at a facility, no informed judgment that an engine is certifiable or is covered by a certificate can properly be based on those data. It is the responsibility of the manufacturer to locate its testing and manufacturing facilities in jurisdictions where this situation will not arise.

(7) For purposes of this section:

(i) ‘‘Presentation of credentials’’ shall mean display of the document designating a person as an EPA Enforcement Officer.

(ii) Where component or engine storage areas or facilities are concerned, ‘‘operating hours’’ shall mean all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(iii) Where facilities or areas other than those covered by paragraph (d)(7)(ii) of this section are concerned, ‘‘operating hours’’ shall mean all times during which an assembly line is in operation or all times during which testing, maintenance, service accumulation, production or compilation of records, or any other procedure or activity related to certification testing, to translation of designs from the test stage to the production stage, or to engine manufacture, or assembly is being carried out in a facility.

(iv) ‘‘Reasonable assistance’’ includes, but is not limited to, clerical, copying, interpretation and translation services, the making available on request of personnel of the facility being inspected during their working hours to inform the EPA Enforcement Officer of how the facility operates and to answer his questions, and the performance on request of emissions tests on any engine which is being, has been, or will be used for certification testing. Such tests shall be nondestructive, but may require appropriate service accumulation. A manufacturer may be compelled to cause the personal appearance of any employee at such a facility before an EPA Enforcement Officer by written request for his appearance, signed by the Assistant Administrator for Air and Radiation or the Assistant Administrator for Enforcement and Compliance Assurance, served on the manufacturer. Any such employee who has been instructed by the manufacturer to appear will be entitled to be accompanied, represented and advised by counsel.

(v) Any entry without 24 hour prior written or oral notification to the affected manufacturer shall be authorized in writing by the Assistant Administrator for Air and Radiation or the Assistant Administrator for Enforcement and Compliance Assurance.

(8) EPA may void a certificate of conformity *ab initio* for engines introduced into commerce if the manufacturer (or contractor for the manufacturer, if applicable) fails to comply with any provision of this section.

§ 94.216 Hearing procedures.

(a)(1) After granting a request for a hearing under § 94.210 or § 94.208, the Administrator shall designate a Presiding Officer for the hearing.

(2) The hearing shall be held as soon as practicable at a time and place fixed by the Administrator or by the Presiding Officer.

(3) In the case of any hearing requested pursuant to § 94.208, the Administrator may in his/her discretion direct that all argument and presentation of evidence be concluded within such fixed period not less than 30 days as he/she may establish from the date that the first written offer of a hearing is made to the manufacturer. To expedite proceedings, the Administrator may direct that the decision of the Presiding Officer (who may, but need not be the Administrator) shall be the final EPA decision.

(b)(1) Upon his/her appointment pursuant to paragraph (a) of this section, the Presiding Officer will establish a hearing file. The file shall consist of the notice issued by the Administrator under § 94.210 or § 94.208 together with any accompanying material, the request for a hearing and the supporting data submitted therewith, and all documents relating to the request for certification and all documents submitted therewith, and correspondence and other data material to the hearing.

(2) The hearing file will be available for inspection by the applicant at the office of the Presiding Officer.

(c) An applicant may appear in person, or may be represented by counsel or by any other duly authorized representative.

(d)(1) The Presiding Officer, upon the request of any party, or in his/her discretion, may arrange for a prehearing conference at a time and place specified by him/her to consider the following:

(i) Simplification of the issues;

(ii) Stipulations, admissions of fact, and the introduction of documents;

(iii) Limitation of the number of expert witnesses;

(iv) Possibility of agreement disposing of all or any of the issues in dispute;

(v) Such other matters as may aid in the disposition of the hearing, including such additional tests as may be agreed upon by the parties.

(2) The results of the conference shall be reduced to writing by the Presiding Officer and made part of the record.

(e)(1) Hearings shall be conducted by the Presiding Officer in an informal but orderly and expeditious manner. The parties may offer oral or written evidence, subject to the exclusion by the Presiding Officer of irrelevant, immaterial and repetitious evidence.

(2) Witnesses will not be required to testify under oath. However, the Presiding Officer shall call to the attention of witnesses that their statements may be subject to the provisions of 18 U.S.C. 1001 which imposes penalties for knowingly making false statements or representations, or using false documents in any matter within the jurisdiction of any department or agency of the United States.

(3) Any witness may be examined or cross-examined by the Presiding Officer, the parties, or their representatives.

(4) Hearings shall be reported verbatim. Copies of transcripts of proceedings may be purchased by the applicant from the reporter.

(5) All written statements, charts, tabulations, and similar data offered in evidence at the hearings shall, upon a showing satisfactory to the Presiding Officer of their authenticity, relevancy, and materiality, be received in evidence and shall constitute a part of the record.

(6) Oral argument may be permitted in the discretion of the Presiding Officer and shall be reported as part of the record unless otherwise ordered by him/her.

(f)(1) The Presiding Officer shall make an initial decision which shall include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law, or discretion presented on the record. The findings, conclusions, and written decision shall be provided to the parties and made a part of the record. The initial decision shall become the decision of the Administrator without further proceedings unless there is an appeal to the Administrator or motion for review by the Administrator within 30 days of the date the initial decision was filed.

(2) On appeal from or review of the initial decision, the Administrator shall have all the powers which he/she would have in making the initial decision including the discretion to require or allow briefs, oral argument, the taking of additional evidence or the remanding to the Presiding Officer for additional proceedings. The decision by the Administrator shall include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law, or discretion presented on the appeal or considered in the review.

§ 94.217 Emission data engine selection.

(a) The manufacturer must select for testing, from each engine family, the engine configuration which is expected to be worst-case for exhaust emission compliance on in-use engines, considering all exhaust emission constituents and the range of installation options available to vessel builders. The engines selected for testing are collectively described as the test fleet.

(b) Each engine in the test fleet must be constructed to be representative of production engines.

(c) After review of the manufacturer's test fleet, the Administrator may select from the available fleet one additional test engine from each engine family.

(d) Each engine selected shall be tested according to the provisions of Subpart B of this part.

(e) In lieu of testing an emission data engine selected under paragraph (a) of this section and submitting the resulting data, a manufacturer may, with Administrator approval, use emission data on a similar engine for which certification has previously been obtained or for which all applicable data required under this subpart have previously been submitted. These data must be submitted in the application for certification.

§ 94.218 Deterioration factor determination.

Manufacturers shall determine exhaust emission deterioration factors using good engineering judgement according to the provisions of this section. Every deterioration factor must be, in the Administrator's judgment, consistent with emissions increases observed in-use based on emission testing of similar engines. Deterioration factors that predict emission increases over the useful life of an engine that are significantly less than the emission increases over the useful life observed from in-use testing of similar engines shall not be used.

(a) A separate exhaust emission deterioration factor shall be established for each engine family and for each emission constituent applicable to that family.

(b) *Calculation procedures.* (1) *For engines not utilizing aftertreatment technology (e.g., catalyst).* For each applicable emission constituent, an additive deterioration factor shall be used; that is, a deterioration factor that when added to the low mileage emission rate equals the emission rate at the end of useful life. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this section.

(2) *For engines utilizing aftertreatment technology (e.g., catalyst).* For each applicable emission constituent, a multiplicative deterioration factor shall be used; that is deterioration factors that when multiplied by the low mileage emission rate equal the emission rate at the end of useful life. However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for the purposes of this section.

(c) *Rounding.* (1) In the case of a multiplicative exhaust emission deterioration factor, the factor shall be rounded to three places to the right of the decimal point in accordance with ASTM E 29–93a (incorporated by reference at § 94.5).

(2) In the case of an additive exhaust emission deterioration factor, the factor shall be established to a minimum of two places to the right of the decimal in accordance with ASTM E 29–93a (incorporated by reference at § 94.5).

(d)(1) Except as allowed by paragraph (d)(2) of this section, the manufacturer shall determine the deterioration factors based on service accumulation and related testing, according to the manufacturer's procedures, and the provisions of §§ 94.219 and 94.220. The manufacturer shall determine the form and extent of this service accumulation, consistent with good engineering practice, and shall describe this process in the application for certification.

(2) *Alternatives to service accumulation and testing for the determination of a deterioration factor.* A written explanation of the appropriateness of using an alternative must be included in the application for certification.

(i) *Carryover and carryacross of durability emission data.* In lieu of testing an emission data or durability data engine selected under § 94.217 or § 94.219, and submitting the resulting data, a manufacturer may, with Administrator approval, use exhaust emission deterioration data on a similar engine for which certification to the same standard has previously been obtained or for which all applicable data required under this subpart have previously been submitted. These data must be submitted in the application for certification.

(ii) *Use of non-marine deterioration data.* In the case where a manufacturer produces a certified motor vehicle engine, locomotive engine, or other nonroad engine that is similar to the marine engine to be certified, deterioration data from the non-marine engine may be applied to the marine engine. This application of deterioration data from such an engine to a marine engine is subject to Administrator approval, and the determination of whether the engines are similar shall be based on good engineering judgment.

(iii) *Engineering analysis for established technologies.* In the case where an engine family uses technology which is well established, an analysis based on good engineering practices may be used in lieu of testing to determine a deterioration factor for that engine family. Engines using exhaust gas recirculation or aftertreatment are excluded from this provision. The manufacturer shall provide a written statement to the Administrator that all data, analyses, test procedures, evaluations, and other documents, on which the deterioration factor is based, are available to the Administrator upon request.

§ 94.219 Durability data engine selection.

(a) The manufacturer shall select for durability testing, from each engine family, the engine configuration which is expected to generate the highest level of exhaust emission deterioration on engines in use, considering all exhaust emission constituents and the range of installation options available to vessel builders. The manufacturer shall use good engineering judgment in making this selection.

(b) Carryover data satisfying the provisions of § 94.220 may also be used in lieu of testing the configuration selected in paragraph (a) of this section.

(c) Durability data engines shall be built from subsystems and components that are representative of actual production engines.

§ 94.220 Service accumulation.

(a) Each test emission data engine in the test fleet may be operated with all emission control systems operating properly for a period, up to 125 hours of operation, that is sufficient to stabilize emissions.

(b) Durability data engines shall accumulate service in a manner which will represent the emission levels from in-use engines over their full useful life, consistent with good engineering judgement.

(1) Components may be removed from the engine and aged separately.

(2) End of useful life emission levels and deterioration factors may be projected from durability data engines which have completed less than full useful life service accumulation, provided that the amount of service accumulation completed and projection procedures are determined using good engineering judgement.

(c) No maintenance, other than recommended lubrication and filter changes or maintenance otherwise allowed by this part, may be performed during service accumulation without the Administrator's approval.

(d) The manufacturer must maintain, and provide to the Administrator if requested, records stating the rationale for selecting the service accumulation period and records describing the method used to accumulate service hours on the test engine(s).

§ 94.221 Application of good engineering judgment.

(a) The manufacturer shall exercise good engineering judgment in making all decisions called for under this part, including but not limited to selections, categorizations, determinations, and applications of the requirements of the part.

(b) Upon written request by the Administrator, the manufacturer shall provide within 15 working days (or such longer period as may be allowed by the Administrator) a written description of the engineering judgment in question.

(c) The Administrator may reject any such decision by a manufacturer if it is not based on good engineering judgment or is otherwise inconsistent with the requirements of this part.

(d) If the Administrator rejects a decision by a manufacturer with respect to the exercise of good engineering judgment, the following provisions shall apply:

(1) If the Administrator determines that incorrect information was deliberately used in the decision process, that important information was deliberately overlooked, that the decision was not made in good faith, or that the decision was not made with a rational basis, the Administrator may suspend or void *ab initio* a certificate of conformity.

(2) If the Administrator determines that the manufacturer's decision is not covered by the provisions of paragraph (d) (1) of this section, but that a different decision would reflect a better exercise of good engineering judgment, then the Administrator will notify the

manufacturer of this concern and the basis of the concern.

(i) The manufacturer shall have at least 30 days to respond to this notice. The Administrator may extend this response period upon request from the manufacturer if it is necessary to generate additional data for the manufacturer's response.

(ii) The Administrator shall make the final ruling after considering the information provided by the manufacturer during the response period. If the Administrator determines that the manufacturer's decision was not made using good engineering judgment, he/she may reject that decision and apply the new ruling to future corresponding decisions as soon as practicable.

(e) The Administrator shall notify the manufacturer in writing regarding any decision reached under paragraph (d)(1) or (2) of this section. The Administrator shall include in this notification the basis for reaching the determination.

(f) Within 30 working days following receipt of notification of the Administrator's determinations made under paragraph (d) of this section, the manufacturer may request a hearing on those determinations. The request shall be in writing, signed by an authorized representative of the manufacturer, and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data or other analysis in support of such objections. If, after review of the request and supporting data or analysis, the Administrator finds that the request raises a substantial factual issue, he/she shall provide the manufacturer a hearing in accordance with § 94.216 with respect to such issue.

§ 94.222 Certification of engines on imported vessels.

For marine engines subject to the requirements of this part that are installed on imported vessels, the Administrator may specify alternate certification provisions as necessary.

Subpart D Certification Averaging, Banking, and Trading Provisions

§ 94.301 Applicability.

Marine engine families subject to the standards of Subpart A of this part are eligible to participate in the certification averaging, banking, and trading program described in this subpart.

The provisions of this subpart apply to manufacturers of new engines that are subject to the emission standards of § 94.8.

§ 94.302 Definitions.

The definitions of Subpart A of this part apply to this subpart. The following definitions also apply:

Applicable standard means a standard that would have otherwise been applicable had the engine not been certified under this subpart to an FEL different than that standard.

Broker means any entity that facilitates a trade between a buyer and seller.

Buyer means the entity that receives credits as a result of trade.

Reserved credits means credits that have been generated but have not yet been reviewed by EPA or used to demonstrate compliance under the averaging provisions of this subpart.

Seller means the entity that provides credits during a trade.

§ 94.303 General provisions.

(a) Participation in the averaging, banking, and trading program is voluntary. A manufacturer may choose to involve some or all of its engine families in any or all aspects of the program.

(b) An engine family is eligible to participate in the certification averaging, banking, and trading program for THC+NO_X and PM emissions only if it is subject to regulation under this part with certain exceptions specified in paragraph (c) of this section. No averaging, banking, and trading program is available for meeting the CO standards of this part.

(c) Engines may not participate in the certification averaging, banking, and trading program if they are exported. Only engines certified under this part are eligible for generation or use of credits in this certification averaging, banking, and trading program. Engines certified to the Blue Sky provisions of § 94.8(f) are not eligible for inclusion in this certification averaging, banking, and trading program.

(d) Averaging involves the generation of credits by a manufacturer for use by that same manufacturer in the same calendar year. A manufacturer may use averaging during certification to offset an emission exceedance of an engine family caused by an FEL above the applicable emission standard, subject to the provisions of this subpart.

(e) Banking involves the generation of credits by a manufacturer in a given calendar year for use in a subsequent model year. A manufacturer may bank actual credits only after the end of the calendar year and after EPA has reviewed the manufacturer's end-of-year reports. During the calendar year and before submittal of the end-of-year report, credits originally designated in the certification process for banking will be considered reserved and may be redesignated for trading or averaging in the end-of-year report. Credits declared for banking from the previous calendar year that have not been reviewed by EPA may be used in averaging or trading transactions. However, such credits may be revoked at a later time following EPA review of the end-of-year report or any subsequent audit actions.

(f) Trading involves the sale of banked credits for use in certification of new engines under this part. Only banked credits may be traded; reserved credits may not be traded.

§ 94.304 Compliance requirements.

(a) Manufacturers wishing to participate in certification averaging, banking and trading programs shall select a FEL for each engine family they wish to include. The level of the FEL shall be selected by the manufacturer, subject to the upper limits described in paragraph (m) of this section. An engine family certified to an FEL is subject to all provisions specified in this part, except that the applicable FEL replaces the applicable THC+NO_X and PM emission standard for the family participating in the averaging, banking, and trading program.

(b) A manufacturer may certify one or more engine families at FELs above or below the applicable emission standard, provided the summation of the manufacturer's projected balance of all credit transactions in a given calendar year is greater than or equal to zero, as calculated for each family under § 94.305 and reported under § 94.309.

(c) Manufacturers certifying engine families with FELs exceeding the applicable emission standard shall obtain emission credits in amounts sufficient to address the shortfall. Credits may be obtained from averaging, banking, or trading, subject to the restrictions described in this subpart.

(d) Manufacturers certifying engine families with FELs below the applicable emission standard may generate emission credits to average, bank, or trade, or a combination thereof.

(e) An engine family may not generate credits for one pollutant while also using credits for another pollutant in the same model year.

(f) Credits may only be used for certification; they may not be used to remedy a violation of the FEL determined by production line or in-use testing. Credits may be used to allow subsequent production of engines for an engine family failing production line testing if the manufacturer elects to recertify to a higher FEL.

(g) [Reserved].

(h) If an FEL is changed after initial certification in any given model year, the manufacturer must conduct production line testing to verify that the emission levels are achieved, with one exception: when an FEL is changed immediately after (and because of) a production line testing failure, additional verification testing is not required.

(i) Manufacturers participating in the averaging, banking and trading program must demonstrate compliance with the applicable emission standards at the end of the model year. Manufacturers that have certified engine families to FELs above the applicable emission standards and do not have sufficient emission credits to offset the difference between the emission standard and the FEL for such engine families will be in violation of the conditions of the certificate of conformity for such engine families. The certificates of conformity may be voided *ab initio* for those engine families.

(j) In the event of a negative credit balance resulting from a credit trade, both the buyer(s) and the seller(s) are liable, except in cases involving fraud. Certificates of all engine families participating in a negative trade may be voided *ab initio.*

(1) Where a buyer of credits is not responsible for causing the negative credit balance, the buyer is only liable to supply additional credits equivalent to any amount of invalid credits that the buyer used for its engine family(ies).

(2) Credit holders responsible for the credit shortfall may be subject to the requirements of § 94.309(g)(3).

(k) Credits generated by Category 1 engine families may be used for compliance by Category 1 or Category 2 engine families. Credits generated from Category 1 engine families for use by Category 2 engine families must be discounted by 25 percent. Credits generated by Category 2 engine families may be used for compliance only by Category 2 engine families.

(l) Credit life shall be unlimited.

(m) Upper limits. The FELs for THC+NO_X and PM for new engines certified for participation in this averaging, banking and trading program may not exceed the following values:

(1) For Category 1 engines, the FEL may not exceed the levels contained in Table D–1, which follows:

TABLE D–1.—CATEGORY 1 UPPER LIMITS FOR TIER 2 FAMILY EMISSION LIMITS

Subcategory liters/cylinder	Model year [1]	THC+NO_X FEL g/kW-hr	PM FEL g/kW-hr
Power ≥ 37 kW disp. < 0.9	2005	11.5	1.2
0.9 ≤ disp. < 1.2	2004	11.5	1.2
1.2 ≤ disp. < 2.5	2004	10.5	0.54
2.5 ≤ disp. < 5.0	2007	10.5	0.54

[1] The model years listed indicate the model years for which the specified standards start.

(2) For Category 2 engines, the FEL may not exceed the applicable standard by more than 25 percent.

§ 94.305 Credit generation and use calculation.

(a) For each participating engine family, THC+NO_X and PM emission credits (positive or negative) are to be calculated according to the equation in paragraph (b) of this section and rounded in accordance with ASTM E 29–93a (incorporated by reference at § 94.5), to the nearest one-hundredth of a megagram (Mg). Consistent units are to be used throughout the calculation.

(b) Credits (Mg) for each engine family are calculated as: Emission credits = (Std—FEL) X (UL) X (Production) X (AvgPR) X (LF) X (10^{-6})

Where:

(i) Std = the applicable cycle-weighted marine engine THC+NO_X or PM emission standard in grams per kilowatt-hour.

(ii) FEL = the family emission limit for the engine family in grams per kilowatt-hour. (The FEL may not exceed the limit established in § 94.304(m) for each pollutant.)

(iii) UL = the useful life in hours of operation.

(iv) Production = the number of engines participating in the averaging, banking, and trading program within the given engine family during the calendar year (or the number of engines in the subset of the engine family for which credits are being calculated). Quarterly production projections are used for initial certification. Actual applicable production/sales volumes are used for end-of-year compliance determination.

(v) AvgPR = average power rating of all of the configurations within an engine family, calculated on a sales-weighted basis, in kilowatts.

(vi) LF = the load factor, dependent on whether the engine is intended for propulsion or auxiliary applications, as follows:

(A) 0.69 for propulsion engines,

(B) 0.51 for auxiliary engines.

§ 94.306 Certification.

(a) In the application for certification a manufacturer must:

(1) Declare its intent to include specific engine families in the averaging, banking, and/or trading programs. Separate declarations are required for each pollutant (THC+NO_X and PM).

(2) Declare FELs for each engine family participating in certification averaging, banking, and/or trading.

(i) The FELs must be to the same number of significant digits as the emission standard.

(ii) In no case may the FEL exceed the upper limit prescribed in § 94.304(m).

(3) Conduct and submit detailed calculations of projected emission credits (positive or negative) based on quarterly production projections for each participating family and for each pollutant, using the applicable equation in § 94.305 and the applicable values of the terms in the equation for the specific family.

(i) If the engine family is projected to have negative emission credits, state specifically the source (manufacturer/engine family) of the credits necessary to offset the credit deficit according to quarterly projected production.

(ii) If the engine family is projected to generate credits, state specifically where the quarterly projected credits will be applied (manufacturer/engine family or reserved).

(4) Submit a statement that the engines for which certification is requested will not, to the best of the manufacturer's belief, cause the manufacturer to have a negative credit balance when all credits are calculated for all the manufacturer's engine families participating in the averaging, banking, and trading program.

(b) Based on this information, each manufacturer's certification application must demonstrate:

(1) That at the end of model year production, each engine family has a net emissions credit balance equal to or greater than zero for any pollutant and program for which participation in certification under averaging, banking, and/or trading is being sought. The equation in section § 94.305 shall be used in this calculation for each engine family.

(2) That the manufacturer will obtain sufficient credits to be used to comply with the emission standard for any engine family with an FEL that exceeds the applicable emission standard, or where credits will be applied if the FEL is less than the emission standard. In cases where credits are being obtained, for each engine family involved the manufacturer must identify specifically the source of the credits being used (manufacturer/engine family). All such reports shall include all credits involved in certification averaging, banking, or trading.

(3) That in cases where credits are being generated/supplied, the use of such credits is specifically designated (manufacturer/engine family or reserved). All such reports shall include all credits involved in certification averaging, banking, or trading.

(c) Manufacturers must monitor projected versus actual production throughout the model year to ensure that compliance with emission standards is achieved at the end of the model year.

(d) At the end of the model year, the manufacturer must provide the end-of-year reports required under § 94.309.

(1) Projected credits based on the information supplied in the certification application may be used to obtain a certificate of conformity. However, any such projected credits must be validated based on review of the end of model year reports and may be revoked at a later time based on follow-up audits or any other verification measure deemed appropriate by the Administrator.

(2) Compliance for engine families using averaging, banking, or trading will be determined at the end of the model year. Manufacturers that have certified engine families with credit balances for THC+NO_X and/or PM that do not equal or exceed zero shall be in violation of the conditions of the certificate of conformity for such engine families. The certificate of conformity may be voided *ab initio* for those engine families.

(e) Other conditions of certification.

(1) All certificates issued are conditional upon compliance by the manufacturer with the provisions of this subpart both during and after the calendar year of production.

(2) Failure to comply with all provisions of this subpart will be considered to be a failure to satisfy the conditions upon which the certificate was issued, and the certificate may be deemed void *ab initio*.

(3) The manufacturer bears the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied or waived.

§ 94.307 Labeling.

For all engines included in the certification averaging, banking, and trading program, the FEL to which the engine is certified must be included on the label required in § 94.212.

§ 94.308 Maintenance of records.

(a) The manufacturer of any engine that is certified under the averaging, banking, and trading program must establish, maintain, and retain the following adequately organized and indexed records for each such engine produced:

(1) EPA engine family and configuration;

(2) Engine identification number;

(3) Engine calendar year and build date;

(4) Rated power;

(5) Purchaser and destination; and

(6) Assembly plant.

(b) The manufacturer of any engine family that is certified under the averaging, banking, and trading program must establish, maintain, and retain the following adequately organized and indexed records for each such family:

(1) Model year and EPA engine family;

(2) Family Emission Limit(s) (FEL);

(3) Rated power for each configuration;

(4) Projected applicable production/sales volume for the calendar year;

(5) Actual applicable production/sales volume for the calendar year; and

(6) Useful life.

(c) Any manufacturer producing an engine family participating in trading of credits must maintain the following records on a quarterly basis for each engine family in the trading program:

(1) The model year and engine family;

(2) The actual quarterly and cumulative applicable production/sales volume;

(3) The values required to calculate credits as given in § 94.305;

(4) The resulting type and number of credits generated/required;

(5) How and where credit surpluses are dispersed; and

(6) How and through what means credit deficits are met.

(d) The manufacturer must retain all records required to be maintained under this section for a period of 8 years from the due date for the end-of-calendar year report. Records may be retained as hard copy or reduced to microfilm, ADP diskettes, and so forth, depending on the manufacturer's record retention procedure; provided, that in every case all information contained in the hard copy is retained.

(e) Nothing in this section limits the Administrator's discretion in requiring the manufacturer to retain additional records or submit information not specifically required by this section.

(f) Pursuant to a request made by the Administrator, the manufacturer must submit to the Administrator the information that the manufacturer is required to retain.

(g) EPA may void *ab initio* a certificate of conformity for an engine family for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

§ 94.309 Reports.

(a) Manufacturers must submit the certification information as required under § 94.306, and end-of-year reports each year as part of their participation in certification averaging, banking, and trading programs.

(b) Quarterly reports. All entities involved in credit trades must submit quarterly reports. The reports shall include the source or recipient of the credits, the amount of credits involved plus remaining balances, details regarding the pollutant, and model year as well as the information prescribed in § 94.308(c). Copies of contracts related to credit trading must be included or supplied by the buyer, seller, and broker, as applicable.

(c) End-of-year reports must include the information prescribed in § 94.308(b). The report shall include a calculation of credit balances for each family to show that the summation of the manufacturer's use of credits results in a credit balance equal to or greater than zero. The report shall be consistent in detail with the information submitted under § 94.306 and show how credit surpluses were dispersed and how credit shortfalls were met on a family specific basis. The end-of-year report shall incorporate any information reflected in previous quarterly reports.

(d) The applicable production/sales volume for quarterly and end-of-year reports must be based on the location of either the point of first retail sale by the manufacturer or the point at which the engine is placed into service, whichever occurs first. This is called the final product purchase location.

(e) Each quarterly and end-of-year report submitted shall include a statement certifying to the accuracy and authenticity of the material reported therein.

(f) Requirements for submission. (1) Quarterly reports must be submitted within 90 days of the end of the calendar quarter to the Designated Officer.

(2) End-of-year reports must be submitted within 120 days of the end of the calendar year to the Designated Officer.

(3) Failure by a manufacturer participating in the averaging, banking, or trading program to submit any quarterly or end-of-year reports in the specified time for all engines is a violation of sections 203(a)(1) and 213 of the Clean Air Act for each engine.

(4) A manufacturer generating credits for banking only who fails to submit end-of-year reports in the applicable specified time period (120 days after the end of the calendar year) may not use or trade the credits until such reports are received and reviewed by EPA. Use of projected credits pending EPA review is not permitted in these circumstances.

(g) Reporting errors. (1) Errors discovered by EPA or the manufacturer in the end-of-year report, including errors in credit calculation, may be corrected 180-days subsequent to submission of the end-of-year report. Errors discovered by EPA after 180-days shall be correctable if, as a result of the correction, the manufacturer's credits are reduced. Errors in the manufacturer's favor are not corrected if discovered after the 180-day correction period allowed.

(2) If EPA or the manufacturer determines that a reporting error occurred on an end-of-year report previously submitted to EPA under this section, the manufacturer's credits and credit calculations will be recalculated. Erroneous positive credits will be void. Erroneous negative credit balances may be corrected by EPA.

(3) If EPA review of a manufacturer's end-of-year report indicates a credit shortfall, the manufacturer will be permitted to purchase the necessary credits to bring the credit balance to zero. These credits must be supplied at the ratio of 1.1 credits for each 1.0 credit needed. If sufficient credits are not available to bring the credit balance to zero for the family(ies) involved, EPA may void the certificate(s) for that family(ies) *ab initio*. In addition, all engines within an engine family for which there are insufficient credits will be considered to have violated the conditions of the certificate of conformity and therefore are not covered by that certificate.

(4) If within 180 days of receipt of the manufacturer's end-of-year report, EPA review determines a reporting error in the manufacturer's favor (that is, resulting in an increased credit balance) or if the manufacturer discovers such an error within 180 days of EPA receipt of the end-of-year report, the credits are restored for use by the manufacturer.

§ 94.310 Notice of opportunity for hearing.

Any voiding of the certificate under this subpart will be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 94.216 and, if a manufacturer requests such a hearing, will be made only after an initial decision by the Presiding Officer.

Subpart E—Emission-related Defect Reporting Requirements, Voluntary Emission Recall Program

§ 94.401 Applicability.

The requirements of this subpart are applicable to manufacturers of engines subject to the provisions of Subpart A of this part. The requirement to report emission-related defects affecting a given class or category of engines applies for eight years from the end of the year in which such engines were manufactured.

§ 94.402 Definitions.

The definitions of Subpart A of this part apply to this subpart.

§ 94.403 Emission defect information report.

(a) A manufacturer must file a defect information report whenever it determines, in accordance with procedures it established to identify either safety-related or performance defects (or based on other information), that a specific emission-related defect exists in 25 or more Category 1 marine engines, or 10 or more Category 2 marine engines. No report must be filed under this paragraph for any emission-related defect corrected prior to the sale of the affected engines to an ultimate purchaser. (Note: These limits apply to the occurrence of the same defect, and are not constrained by engine family or model year.)

(b) Defect information reports required under paragraph (a) of this section must be submitted not more than 15 working days after the same emission-related defect is found to effect 25 or more Category 1 marine engines, or 10 or more Category 2 marine engines. Information required by paragraph (c) of this section that is either not available within 15 working days or is significantly revised must be submitted as it becomes available.

(c) Except as provided in paragraph (b) of this section, each defect report must contain the following information in substantially the format outlined:

(1) The manufacturer's corporate name.

(2) A description of the defect.

(3) A description of each class or category of engines potentially affected by the defect including make, model, calendar year produced, purchaser and any other information as may be required to identify the engines affected.

(4) For each class or category of engines described in response to paragraph (c)(3) of this section, the following shall also be provided:

(i) The number of engines known or estimated to have the defect and an explanation of the means by which this number was determined.

(ii) The address of the plant(s) at which the potentially defective engines were produced.

(5) An evaluation of the emissions impact of the defect and a description of any operational or performance problems which a defective engine might exhibit.

(6) Available emissions data which relate to the defect.

(7) An indication of any anticipated follow-up by the manufacturer.

§ 94.404 Voluntary emissions recall reporting.

(a) When any manufacturer initiates a voluntary emissions recall campaign involving an engine, the manufacturer shall submit to EPA a report describing the manufacturer's voluntary emissions recall plan as prescribed by this section within 15 working days of the date owner notification was begun. The report shall contain the following:

(1) A description of each class or category of engines recalled including the number of engines to be recalled, the calendar year if applicable, the make, the model, and such other information as may be required to identify the engines recalled.

(2) A description of the specific modifications, alterations, repairs, corrections, adjustments, or other changes to be made to correct the engines affected by the emission-related defect.

(3) A description of the method by which the manufacturer will notify engine owners.

(4) A description of the proper maintenance or use, if any, upon which the manufacturer conditions eligibility for repair under the remedial plan, an explanation of the manufacturer's reasons for imposing any such

condition, and a description of the proof to be required of an engine owner to demonstrate compliance with any such condition.

(5) A description of the procedure to be followed by engine owners to obtain correction of the nonconformity. This shall include designation of the date on or after which the owner can have the nonconformity remedied, the time reasonably necessary to perform the labor to remedy the defect, and the designation of facilities at which the defect can be remedied.

(6) If some or all the nonconforming engines are to be remedied by persons other than authorized warranty agents of the manufacturer, a description of the class of persons other than authorized warranty agents of the manufacturer who will remedy the defect.

(7) A copy of any written notification sent to engine owners.

(8) A description of the system by which the manufacturer will assure that an adequate supply of parts will be available to perform the repair under the remedial plan including the date by which an adequate supply of parts will be available to initiate the repair campaign, the percentage of the total parts requirement of each person who is to perform the repair under the remedial plan to be shipped to initiate the campaign, and the method to be used to assure the supply remains both adequate and responsive to owner demand.

(9) Three copies of all necessary instructions to be sent to those persons who are to perform the repair under the remedial plan.

(10) A description of the impact of the changes on fuel consumption, operation or performance, and safety of each class or category of engines to be recalled.

(11) A sample of any label to be applied to engines which participate in the voluntary recall campaign.

(b) Unless otherwise specified by the Administrator, the manufacturer shall report on the progress of the recall campaign by submitting subsequent reports for six consecutive quarters, or until proven that remedial action has been adequately taken on all affected engines, whichever occurs first, commencing with the quarter after the voluntary emissions recall campaign actually begins. Such reports shall be submitted no later than 25 working days after the close of each calendar quarter. For each class or group of engine subject to the voluntary emissions recall campaign, the quarterly report shall contain the:

(1) Emission recall campaign number, if any, designated by the manufacturer.

(2) Date owner notification was begun, and date completed.

(3) Number of engines involved in the voluntary emissions recall campaign.

(4) Number of engines known or estimated to be affected by the emission-related defect and an explanation of the means by which this number was determined.

(5) Number of engines inspected pursuant to voluntary emission recall plan.

(6) Number of inspected engines found to be affected by the emissions-related defect.

(7) Number of engines actually receiving repair under the remedial plan.

(8) Number of engines determined to be unavailable for inspection or repair under the remedial plan due to exportation, scrappage, or for other reasons (specify).

(9) Number of engines determined to be ineligible for remedial action due to a failure to properly maintain or use such engines.

(10) Three copies of any service bulletins which relate to the defect to be corrected and which have not previously been reported.

(11) Three copies of all communications transmitted to engine owners which relate to the defect to be corrected and which have not previously been submitted.

(c) If the manufacturer determines that any of the information requested in paragraph (b) of this section has changed or was incorrect, revised information and an explanatory note shall be submitted. Answers to paragraphs (b)(5), (6), (7), (8), and (9) of this section shall be cumulative totals.

(d) The manufacturer shall maintain in a form suitable for inspection, such as computer information storage devices or card files, the names and addresses of engine owners:

(1) To whom notification was given;

(2) Who received remedial repair or inspection under the remedial plan; and

(3) Who were determined not to qualify for such remedial action when eligibility is conditioned on proper maintenance or use.

(e) The records described in paragraph (d) of this section shall be made available to the Administrator upon request.

§ 94.405 Alternative report formats.

(a) Any manufacturer may submit a plan for making either of the reports required by §§ 94.403 and 94.404 on computer diskettes, magnetic tape or other machine readable format. The plan shall be accompanied by sufficient technical detail to allow a determination that data requirements of these sections will be met and that the data in such format will be usable by EPA.

(b) Upon approval by the Administrator of the reporting system, the manufacturer may use such system until otherwise notified by the Administrator.

§ 94.406 Reports filing: record retention.

(a) The reports required by §§ 94.403 and 94.404 shall be sent to the Designated Officer.

(b) The information gathered by the manufacturer to compile the reports required by §§ 94.403 and 94.404 shall be retained for not less than 8 years from the date of the manufacture of the engines and shall be made available to duly authorized officials of the EPA upon request.

§ 94.407 Responsibility under other legal provisions preserved.

The filing of any report under the provisions of this subpart shall not affect a manufacturer's responsibility to file reports or applications, obtain approval, or give notice under any provision of law.

§ 94.408 Disclaimer of production warranty applicability.

(a) The act of filing an Emission Defect Information Report pursuant to § 94.403 is inconclusive as to the existence of a defect subject to the warranty provided by section 207(a) of the Act.

(b) A manufacturer may include on each page of its Emission Defect Information Report a disclaimer stating that the filing of a Defect Information Report pursuant to this subpart is not conclusive as to the applicability of the Production Warranty provided by section 207(a) of the Act.

Subpart F—Manufacturer Production Line Testing Programs

§ 94.501 Applicability.

(a) The requirements of this subpart are applicable to manufacturers of engines subject to the provisions of Subpart A of this part.

(b) The provisions of Subpart F of 40 CFR Part 89 (Selective Enforcement Audit) apply to engines subject to the provisions of Subpart A of this part.

§ 94.502 Definitions.

The definitions in Subpart A of this part apply to this subpart.

§ 94.503 General requirements.

(a) Manufacturers shall test production line engines in accordance with sampling procedures specified in § 94.505 and the test procedures specified in § 94.506.

(b) Upon request, the Administrator may also allow manufacturers to conduct alternate production line testing programs, provided the Administrator determines that the alternate production line testing program provides equivalent assurance that the engines that are being produced conform to the provisions of this part. As part of this allowance or for other reasons, the Administrator may waive some or all of the requirements of this subpart.

(c) The requirements of this subpart apply with respect to all applicable standards and FELs of Subpart A of this part, including the supplemental standards of § 94.8(e).

§ 94.504 Right of entry and access.

(a) To allow the Administrator to determine whether a manufacturer is complying with the provisions of this part, one or more EPA enforcement officers may enter during operating hours and upon presentation of credentials any of the following places:

(1) Any facility, including ports of entry, where any engine is to be introduced into commerce or any emission-related component is manufactured, assembled, or stored;

(2) Any facility where any test conducted pursuant to a manufacturer's production line testing program or any procedure or activity connected with such test is or was performed;

(3) Any facility where any test engine is present; and

(4) Any facility where any record required under § 94.509 or other document relating to this subpart is located.

(b) Upon admission to any facility referred to in paragraph (a) of this section, EPA enforcement officers are authorized to perform the following inspection-related activities:

(1) To inspect and monitor any aspect of engine manufacture, assembly, storage, testing and other procedures, and to inspect and monitor the facilities in which these procedures are conducted;

(2) To inspect and monitor any aspect of engine test procedures or activities, including test engine selection, preparation and service accumulation, emission duty cycles, and maintenance and verification of test equipment calibration;

(3) To inspect and make copies of any records or documents related to the assembly, storage, selection, and testing of a engine; and

(4) To inspect and photograph any part or aspect of any engine and any component used in the assembly thereof that is reasonably related to the purpose of the entry.

(c) EPA enforcement officers are authorized to obtain reasonable assistance without cost from those in charge of a facility to help the officers perform any function listed in this subpart and they are authorized to request the manufacturer to make arrangements with those in charge of a facility operated for the manufacturer benefit to furnish reasonable assistance without cost to EPA.

(1) Reasonable assistance includes, but is not limited to, clerical, copying, interpretation and translation services; the making available on an EPA enforcement officer's request of personnel of the facility being inspected during their working hours to inform the EPA enforcement officer of how the facility operates and to answer the officer's questions; and the performance on request of emission tests on any engine which is being, has been, or will be used for production line testing.

(2) By written request, signed by the Assistant Administrator for Air and Radiation or the Assistant Administrator for Enforcement and Compliance Assurance, and served on the manufacturer, a manufacturer may be compelled to cause the personal appearance of any employee at such a facility before an EPA enforcement officer. Any such employee who has been instructed by the manufacturer to appear will be entitled to be accompanied, represented, and advised by counsel.

(d) EPA enforcement officers are authorized to seek a warrant or court order authorizing the EPA enforcement officers to conduct the activities authorized in this section, as appropriate, to execute the functions specified in this section. EPA enforcement officers may proceed *ex parte* to obtain a warrant or court order whether or not the EPA enforcement officers first attempted to seek permission from the manufacturer or the party in charge of the facility(ies) in question to conduct the activities authorized in this section.

(e) A manufacturer is responsible for locating its foreign testing and manufacturing facilities in jurisdictions where local law does not prohibit an EPA enforcement officer(s) from conducting the activities specified in this section. EPA will not attempt to make any inspections which it has been informed local foreign law prohibits.

§ 94.505 Sample selection for testing.

(a) At the start of each model year, the manufacturer will begin to select engines from each engine family for production line testing. Each engine will be selected from the end of the production line. Testing shall be performed throughout the entire model year to the extent possible. Engines selected shall cover the broadest range of production possible.

(1)(i) The required sample size for Category 1 engine manufacturers is one percent of projected annual U.S.-directed production for all Category 1 engine families, provided that no engine tested fails to meet applicable emission standards. Test engines shall include a proportional sample from each engine family. The required sample size is zero if a manufacturer's projected annual production for all Category 1 engine families is less than 100.

(ii) The required sample size for a Category 2 engine family is one percent of projected annual U.S.-directed production for that engine family, with a minimum sample size of one test per model year provided that no engine tested fails to meet applicable emission standards.

(2) Manufacturers may elect to test additional engines. All additional engines must be tested in accordance with the applicable test procedures of this part.

(3) The Administrator may reject any engines selected by the manufacturer if he/she determines that such engines are not representative of actual production.

(b) The manufacturer must assemble the test engines using the same mass production process that will be used for engines to be introduced into commerce.

(c) No quality control, testing, or assembly procedures will be used on any test engine or any portion thereof, including parts and subassemblies, that have not been or will not be used during the production and assembly of all other engines of that family, except with the approval of the Administrator.

§ 94.506 Test procedures.

(a)(1) For engines subject to the provisions of this subpart, the prescribed test procedures are those procedures described in Subpart B of this part, except as provided in this section.

(2) The Administrator may, on the basis of a written application by a manufacturer, prescribe test procedures other than those specified in paragraph (a)(1) of this section for any engine he/she determines is not susceptible to satisfactory testing using procedures specified in paragraph (a)(1) of this section.

(3) If test procedures other than those in Subpart B of this part were used in certification of the engine family being

tested under this subpart (other than alternate test procedures necessary for testing of a development engine instead of a low hour engine under § 94.9), the manufacturer shall use the test procedures used in certification for production line testing.

(b)(1) The manufacturer may not adjust, repair, prepare, modify, or perform any emission test on any test engine unless this adjustment, repair, preparation, modification and/or test is documented in the manufacturer's engine assembly and inspection procedures and is actually performed by the manufacturer or unless this adjustment, repair, preparation, modification and/or test is required or permitted under this subpart or is approved in advance by the Administrator.

(2) Any adjustable engine parameter must be set to values or positions that are within the range specified in the approved application for certification.

(3) The Administrator may adjust or require to be adjusted any engine parameter which the Administrator has determined to be subject to adjustment for certification and production line testing, to any setting within the specified adjustable range of that parameter, as determined by the Administrator, prior to the performance of any test.

(c) Service Accumulation/Green Engine Factor. The manufacturer shall accumulate up to 300 hours of service on the engines to be tested. In lieu of conducting such service accumulation, the manufacturer may establish a Green Engine Factor for each regulated pollutant for each engine family to be used in calculating emissions test results. The manufacturer shall obtain the approval of the Administrator prior to using a Green Engine Factor.

(d) The manufacturer may not perform any maintenance on test engines after selection for testing.

(e) If an engine is shipped to a facility other than the production facility for production line testing, and an adjustment or repair is necessary because of such shipment, the engine manufacturer must perform the necessary adjustment or repair only after the initial test of the engine, except where the Administrator has determined that the test would be impossible to perform or would permanently damage the engine.

(f) If an engine cannot complete the service accumulation or an emission test, because of a malfunction, the manufacturer may request that the Administrator authorize either the repair of that engine or its deletion from the test sequence.

(g) *Retesting.* If an engine manufacturer determines that any production line emission test of an engine is invalid, the engine must be retested in accordance with the requirements of this subpart. Emission results from all tests must be reported to EPA, including test results the manufacturer determines are invalid. The engine manufacturer must also include a detailed explanation of the reasons for invalidating any test in the quarterly report required in § 94.508(e). In the event a retest is performed, a request may be made to the Administrator, within ten days of the end of the production quarter, for permission to substitute the after-repair test results for the original test results. The Administrator will either affirm or deny the request by the engine manufacturer within ten working days from receipt of the request.

§ 94.507 Sequence of testing.

(a) If one or more engines fail a production line test, then the manufacturer must test two additional engines for each engine that fails.

(b) The two additional engines tested under paragraph (a) of this section shall be selected from either the next fifteen produced in that engine family, or from those engines produced in that engine family within 48 hours of the completion of the failed test.

§ 94.508 Calculation and reporting of test results.

(a) Manufacturers shall calculate initial test results using the applicable test procedure specified in § 94.506(a). These results must also include the Green Engine Factor, if applicable. The manufacturer shall round these results, in accordance with ASTM E 29–93a (incorporated by reference at § 94.5), to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure.

(b) Test results shall be calculated by summing the initial test results derived in paragraph (a) of this section for each test engine, dividing by the number of tests conducted on the engine, and rounding in accordance with ASTM E 29–93a (incorporated by reference at § 94.5) to the same number of decimal places contained in the applicable standard expressed to one additional decimal place. (For example, if the applicable standard is 7.8, then round the test results to two places to the right of the decimal.)

(c) Manufacturers shall calculate the final test results for each test engine by applying the appropriate deterioration factors, derived in the certification process for the engine family, to the test results described in paragraph (b) of this section, and rounding in accordance with ASTM E 29–93a (incorporated by reference at § 94.5) to the same number of decimal places contained in the applicable standard expressed to one additional decimal place. (For example, if the applicable standard is 7.8, then round the test results to two places to the right of the decimal.)

(d) If, subsequent to an initial failure of a production line test, the average of the test results for the failed engine and the two additional engines tested, is greater than any applicable emission standard or FEL, the engine family is deemed to be in non-compliance with applicable emission standards, and the manufacturer must notify the Administrator within 2 working days of such noncompliance.

(e) Within 30 calendar days of the end of each quarter, each manufacturer must submit to the Administrator a report which includes the following information:

(1) The location and description of the manufacturer's emission test facilities which were utilized to conduct testing reported pursuant to this section;

(2) Total production and sample size for each engine family;

(3) The applicable standards and/or FELs against which each engine family was tested;

(4) A description of the test engines;

(5) For each test conducted:

(i) A description of the test engine, including:

(A) Configuration and engine family identification;

(B) Year, make, and build date;

(C) Engine identification number;

(D) Number of hours of service accumulated on engine prior to testing; and

(E) Description of Green Engine Factor; how it is determined and how it is applied;

(ii) Location(s) where service accumulation was conducted and description of accumulation procedure and schedule, if applicable;

(iii) Test number, date, test procedure used, initial test results before and after rounding, and final test results for all production line emission tests conducted, whether valid or invalid, and the reason for invalidation of any test results, if applicable;

(iv) A complete description of any adjustment, modification, repair, preparation, maintenance, and testing which was performed on the test engine, has not been reported pursuant to any other paragraph of this subpart, and will not be performed on other production engines;

(v) Any other information the Administrator may request relevant to the determination whether the new engines being manufactured by the manufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued;

(6) For each failed engine as defined in § 94.510(a), a description of the remedy and test results for all retests as required by § 94.512(g);

(7) The date of the end of the engine manufacturer's model year production for each engine family tested; and

(8) The following signed statement and endorsement by an authorized representative of the manufacturer:

> This report is submitted pursuant to Sections 213 and 208 of the Clean Air Act. This production line testing program was conducted in complete conformance with all applicable regulations under 40 CFR part 94. No emission-related changes to production processes or quality control procedures for the engine family tested have been made during this production line testing program that affect engines from the production line. All data and information reported herein is, to the best of (Company Name) knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder. (Authorized Company Representative.)

§ 94.509 Maintenance of records; submittal of information.

(a) The manufacturer for any new engine subject to any of the provisions of this subpart must establish, maintain, and retain the following adequately organized and indexed records:

(1) General records. A description of all equipment used to test engines in accordance with § 94.503. The equipment requirements in Subpart B of this part apply to tests performed under this subpart.

(2) Individual records. These records pertain to each production line test conducted pursuant to this subpart and include:

(i) The date, time, and location of each test;

(ii) The method by which the Green Engine Factor was calculated or the number of hours of service accumulated on the test engine when the test began and ended;

(iii) The names of all supervisory personnel involved in the conduct of the production line test;

(iv) A record and description of any adjustment, repair, preparation or modification performed on test engines, giving the date, associated time, justification, name(s) of the authorizing personnel, and names of all supervisory personnel responsible for the conduct of the action;

(v) If applicable, the date the engine was shipped from the assembly plant, associated storage facility or port facility, and the date the engine was received at the testing facility;

(vi) A complete record of all emission tests performed pursuant to this subpart (except tests performed directly by EPA), including all individual worksheets and/or other documentation relating to each test, or exact copies thereof, in accordance with the record requirements specified in Subpart B of this part;

(vii) A brief description of any significant events during testing not otherwise described under this paragraph (a)(2) of this section, commencing with the test engine selection process and including such extraordinary events as engine damage during shipment.

(3) The manufacturer must establish, maintain and retain general records, pursuant to paragraph (a)(1) of this section, for each test cell that can be used to perform emission testing under this subpart.

(b) The manufacturer must retain all records required to be maintained under this subpart for a period of eight (8) years after completion of all testing. Records may be retained as hard copy (i.e., on paper) or reduced to microfilm, floppy disk, or some other method of data storage, depending upon the manufacturer's record retention procedure; provided, that in every case, all the information contained in the hard copy is retained.

(c) The manufacturer must, upon request by the Administrator, submit the following information with regard to engine production:

(1) Projected production for each configuration within each engine family for which certification has been requested and/or approved.

(2) Number of engines, by configuration and assembly plant, scheduled for production.

(d) Nothing in this section limits the Administrator's discretion to require a manufacturer to establish, maintain, retain or submit to EPA information not specified by this section.

(e) All reports, submissions, notifications, and requests for approval made under this subpart must be addressed to the Designated Officer.

(f) The manufacturer must electronically submit the results of its production line testing using an EPA information format.

§ 94.510 Compliance with criteria for production line testing.

(a) A failed engine is one whose final test results pursuant to § 94.508(c), for one or more of the applicable pollutants, exceed an applicable emission standard or FEL.

(b) An engine family is deemed to be in noncompliance, for purposes of this subpart, if at any time throughout the model year, the average of an initial failed engine and the two additional engines tested, is greater than any applicable emission standard or FEL.

§ 94.511 [Reserved]

§ 94.512 Suspension and revocation of certificates of conformity.

(a) The certificate of conformity is suspended with respect to any engine that fails a production line test pursuant to § 94.510(a), effective from the time the testing of that engine is completed.

(b) The Administrator may suspend the certificate of conformity for an engine family which is in noncompliance pursuant to § 94.510(b), thirty days after the engine family is deemed to be in noncompliance.

(c) If the results of testing pursuant to this subpart indicate that engines of a particular family produced at one plant of a manufacturer do not conform to the regulations with respect to which the certificate of conformity was issued, the Administrator may suspend the certificate of conformity with respect to that family for engines manufactured by the manufacturer at all other plants.

(d) The Administrator may suspend a certificate of conformity for any engine family in whole or in part if:

(1) The manufacturer fails to comply with any of the requirements of this subpart.

(2) The manufacturer submits false or incomplete information in any report or information provided to the Administrator under this subpart.

(3) The manufacturer renders inaccurate any test data submitted under this subpart.

(4) An EPA enforcement officer is denied the opportunity to conduct activities authorized in this subpart.

(5) An EPA enforcement officer is unable to conduct activities authorized in § 94.504 for any reason.

(e) The Administrator shall notify the manufacturer in writing of any suspension or revocation of a certificate of conformity in whole or in part; a suspension or revocation is effective upon receipt of such notification or thirty days from the time an engine family is deemed to be in noncompliance under §§ 94.508(d), 94.510(a), or 94.510(b), whichever is earlier, except that the certificate is immediately suspended with respect to any failed engines as provided for in paragraph (a) of this section.

(f) The Administrator may revoke a certificate of conformity for an engine family when the certificate has been suspended pursuant to paragraph (b) or (c) of this section if the remedy is one requiring a design change or changes to the engine and/or emission control system as described in the application for certification of the affected engine family.

(g) Once a certificate has been suspended for a failed engine, as provided for in paragraph (a) of this section, the manufacturer must take the following actions before the certificate is reinstated for that failed engine:

(1) Remedy the nonconformity;

(2) Demonstrate that the engine conforms to applicable standards or family emission limits by retesting if applicable, the engine in accordance with this part; and

(3) Submit a written report to the Administrator, after successful completion of testing on the failed engine, which contains a description of the remedy and test results for each engine in addition to other information that may be required by this part.

(h) Once a certificate for a failed engine family has been suspended pursuant to paragraph (b) or (c) of this section, the manufacturer must take the following actions before the Administrator will consider reinstating the certificate:

(1) Submit a written report to the Administrator which identifies the reason for the noncompliance of the engines, describes the remedy, including a description of any quality control and/or quality assurance measures to be taken by the manufacturer to prevent future occurrences of the problem, and states the date on which the remedies will be implemented.

(2) Demonstrate that the engine family for which the certificate of conformity has been suspended does in fact comply with the regulations of this part by testing engines selected from normal production runs of that engine family. Such testing must comply with the provisions of this subpart. If the manufacturer elects to continue testing individual engines after suspension of a certificate, the certificate is reinstated for any engine actually determined to be in conformance with the applicable standards or family emission limits through testing in accordance with the applicable test procedures, provided that the Administrator has not revoked the certificate pursuant to paragraph (f) of this section.

(i) Once the certificate has been revoked for an engine family, if the manufacturer desires to continue introduction into commerce of a modified version of that family, the following actions must be taken before the Administrator may issue a certificate for that modified family:

(1) If the Administrator determines that the change(s) in engine design may have an effect on emission performance deterioration, the Administrator shall notify the manufacturer, within five working days after receipt of the report in paragraph (h)(1) of this section, whether subsequent testing under this subpart will be sufficient to evaluate the change or changes or whether additional testing will be required; and

(2) After implementing the change or changes intended to remedy the nonconformity, the manufacturer must demonstrate that the modified engine family does in fact conform with the regulations of this part by testing engines selected from normal production runs of that engine family. When both of these requirements are met, the Administrator shall reissue the certificate or issue a new certificate, as the case may be, to include that family. If this subsequent testing reveals failing data the revocation remains in effect.

(j) At any time subsequent to an initial suspension of a certificate of conformity for a test engine pursuant to paragraph (a) of this section, but not later than 30 days (or such other period as may be allowed by the Administrator) after notification of the Administrator's decision to suspend or revoke a certificate of conformity in whole or in part pursuant to paragraph (b), (c), or (f) of this section, a manufacturer may request a hearing as to whether the tests have been properly conducted or any sampling methods have been properly applied.

(k) Any suspension of a certificate of conformity under paragraphs (a),(b),(c) and (d) of this section:

(1) Shall be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with §§ 94.513, 94.514, and 94.515; and

(2) Need not apply to engines no longer in the possession of the manufacturer.

(l) After the Administrator suspends or revokes a certificate of conformity pursuant to this section or voids a certificate of conformity under paragraph § 94.215, and prior to the commencement of a hearing under § 94.513, if the manufacturer demonstrates to the Administrator's satisfaction that the decision to suspend, revoke, or void the certificate was based on erroneous information, the Administrator shall reinstate the certificate.

(m) To permit a manufacturer to avoid storing non-test engines while conducting subsequent testing of the noncomplying family, a manufacturer may request that the Administrator conditionally reinstate the certificate for that family. The Administrator may reinstate the certificate subject to the following condition: the manufacturer must commit to recall all engines of that family produced from the time the certificate is conditionally reinstated if the family fails subsequent testing and must commit to remedy any nonconformity at no expense to the owner.

§ 94.513 Request for public hearing.

(a) If the manufacturer disagrees with the Administrator's decision to suspend or revoke a certificate or disputes the basis for an automatic suspension pursuant to § 94.512(a), the manufacturer may request a public hearing.

(b) The manufacturer's request shall be filed with the Administrator not later than 30 days after the Administrator's notification of his or her decision to suspend or revoke, unless otherwise specified by the Administrator. The manufacturer shall simultaneously serve two copies of this request upon the Designated Officer and file two copies with the Hearing Clerk of the Agency. Failure of the manufacturer to request a hearing within the time provided constitutes a waiver of the right to a hearing. Subsequent to the expiration of the period for requesting a hearing as of right, the Administrator may, in his or her discretion and for good cause shown, grant the manufacturer a hearing to contest the suspension or revocation.

(c) A manufacturer shall include in the request for a public hearing:

(1) A statement as to which configuration(s) within a family is to be the subject of the hearing;

(2) A concise statement of the issues to be raised by the manufacturer at the hearing, except that in the case of the hearing requested under § 94.512(j), the hearing is restricted to the following issues:

(i) Whether tests have been properly conducted (specifically, whether the tests were conducted in accordance with applicable regulations under this part and whether test equipment was properly calibrated and functioning);

(ii) Whether there exists a basis for distinguishing engines produced at plants other than the one from which engines were selected for testing which would invalidate the Administrator's decision under § 94.512(c));

(3) A statement specifying reasons why the manufacturer believes it will prevail on the merits of each of the issues raised; and

(4) A summary of the evidence which supports the manufacturer's position on each of the issues raised.

(d) A copy of all requests for public hearings will be kept on file in the Office of the Hearing Clerk and will be made available to the public during Agency business hours.

§ 94.514 Administrative procedures for public hearing.

(a) The Presiding Officer shall be an Administrative Law Judge appointed pursuant to 5 U.S.C. 3105 (see also 5 CFR part 930).

(b) The Judicial Officer shall be an officer or employee of the Agency appointed as a Judicial Officer by the Administrator, pursuant to this section, who shall meet the qualifications and perform functions as follows:

(1) *Qualifications.* A Judicial Officer may be a permanent or temporary employee of the Agency who performs other duties for the Agency. The Judicial Officer shall not be employed by the Office of Enforcement or have any connection with the preparation or presentation of evidence for a hearing held pursuant to this subpart. The Judicial Officer shall be a graduate of an accredited law school and a member in good standing of a recognized Bar Association of any state or the District of Columbia.

(2) *Functions.* The Administrator may consult with the Judicial Officer or delegate all or part of the Administrator's authority to act in a given case under this section to a Judicial Officer, provided that this delegation does not preclude the Judicial Officer from referring any motion or case to the Administrator when the Judicial Officer determines such referral to be appropriate.

(c) For the purposes of this section, one or more Judicial Officers may be designated by the Administrator. As work requires, a Judicial Officer may be designated to act for the purposes of a particular case.

(d)(1) In the case of a hearing requested under § 94.512(j), when it clearly appears from the data and other information contained in the request for a hearing that no genuine and substantial question of fact or law exists with respect to the issues specified in § 94.513(c)(2), the Administrator may enter an order denying the request for a hearing and reaffirming the original decision to suspend or revoke a certificate of conformity.

(2) In the case of a hearing requested under § 94.513 to challenge a suspension of a certificate of conformity for the reason(s) specified in § 94.512(d), when it clearly appears from the data and other information contained in the request for the hearing that no genuine and substantial question of fact or law exists with respect to the issue of whether the refusal to comply with this subpart was caused by conditions and circumstances outside the control of the manufacturer, the Administrator may enter an order denying the request for a hearing and suspending the certificate of conformity.

(3) Any order issued under paragraph (d)(1) or (d)(2) of this section has the force and effect of a final decision of the Administrator, as issued pursuant to § 94.516.

(4) If the Administrator determines that a genuine and substantial question of fact or law does exist with respect to any of the issues referred to in paragraphs (d)(1) and (d)(2) of this section, the Administrator shall grant the request for a hearing and publish a notice of public hearing in the **Federal Register** or by such other means as the Administrator finds appropriate to provide notice to the public.

(e) *Filing and service.* (1) An original and two copies of all documents or papers required or permitted to be filed pursuant to this section and § 94.513(c) must be filed with the Hearing Clerk of the Agency. Filing is considered timely if mailed, as determined by the postmark, to the Hearing Clerk within the time allowed by this section and § 94.513(b). If filing is to be accomplished by mailing, the documents must be sent to the address set forth in the notice of public hearing referred to in paragraph (d)(4) of this section.

(2) To the maximum extent possible, testimony will be presented in written form. Copies of written testimony will be served upon all parties as soon as practicable prior to the start of the hearing. A certificate of service will be provided on or accompany each document or paper filed with the Hearing Clerk. Documents to be served upon the Director of the Engine Programs and Compliance Division must be sent by registered mail to: Director, Engine Programs and Compliance Division 6403–J, U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. Service by registered mail is complete upon mailing.

(f) *Computation of time.* (1) In computing any period of time prescribed or allowed by this section, except as otherwise provided, the day of the act or event from which the designated period of time begins to run is not included. Saturdays, Sundays, and federal legal holidays are included in computing the period allowed for the filing of any document or paper, except that when the period expires on a Saturday, Sunday, or federal legal holiday, the period is extended to include the next following business day.

(2) A prescribed period of time within which a party is required or permitted to do an act is computed from the time of service, except that when service is accomplished by mail, three days will be added to the prescribed period.

(g) *Consolidation.* The Administrator or the Presiding Officer in his or her discretion may consolidate two or more proceedings to be held under this section for the purpose of resolving one or more issues whenever it appears that consolidation will expedite or simplify consideration of these issues. Consolidation does not affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

(h) *Hearing date.* To the extent possible hearings under § 94.513 will be scheduled to commence within 14 days of receipt of the request for a hearing.

§ 94.515 Hearing procedures.

The procedures provided in 40 CFR 86.1014–84(i) through (s) apply for hearings requested pursuant to § 94.513 regarding suspension, revocation, or voiding of a certificate of conformity.

§ 94.516 Appeal of hearing decision.

The procedures provided in 40 CFR 86.1014–84 (t) through (aa) apply for appeals filed with respect to hearings held pursuant to § 94.515.

§ 94.517 Treatment of confidential information.

Except for information required by § 94.508(e)(2) and quarterly emission test results described in § 94.508(e), information submitted pursuant to this subpart shall be made available to the public by EPA, notwithstanding any claim of confidentiality made by the submitter. The provisions for treatment of confidential information described in § 94.4 apply to the information required by § 94.508(e)(2) and quarterly emission test results described in § 94.508(e).

Subpart G—[Reserved]

Subpart H—Recall Regulations

§ 94.701 Applicability.

The requirements of this subpart are applicable to all engines subject to the provisions of this part.

§ 94.702 Definitions.

The definitions in Subpart A of this part apply to this subpart.

§ 94.703 Applicability of 40 CFR part 85, subpart S.

(a) Engines subject to provisions of this part are subject to recall regulations specified in 40 CFR part 85, subpart S, except for the items set forth in this section.

(b) In 40 CFR 85.1801, section 216 of the Clean Air Act applies, rather than section 214 of the Act.

(c) In 40 CFR 85.1802(a), section 213 of the Act applies, rather than section 202 of the Act.

(d) In 40 CFR 85.1803(a) and 85.1805(a)(1) the reference to ''family emission limits'' as defined in this part 94 promulgated under section 213 of the Act applies, rather than the reference to ''family particulate emission limits as defined in 40 CFR part 86 promulgated under section 202 of the Act''.

(e) Throughout the subpart references to ''engines'' apply rather than references to ''vehicles or engines''.

Subpart I—Importation of Nonconforming Engines

§ 94.801 Applicability.

(a) Except where otherwise indicated, this subpart is applicable to importers of engines (and vessels containing engines) for which the Administrator has promulgated regulations under this part prescribing emission standards, that are offered for importation or imported into the United States, but which engines, at the time of importation or being offered for importation, are not covered by certificates of conformity issued under section 213 and section 206(a) of the Clean Air Act (that is, which are nonconforming engines as defined in § 94.2), and this part. Compliance with regulations under this subpart does not relieve any person or entity from compliance with other applicable provisions of the Clean Air Act.

(b) Regulations prescribing further procedures for the importation of engines into the Customs territory of the United States, as defined in 19 U.S.C. 1202, are set forth in U.S. Customs Service regulations (19 CFR Chapter I).

§ 94.802 Definitions.

The definitions of Subpart A of this part apply to this subpart.

§ 94.803 Admission.

(a) A nonconforming engine offered for importation may be admitted into the United States pursuant to the provisions of this subpart. Subpart C of this part, including § 94.222, describes how to certify engines installed on vessels before they are imported.

(b) To obtain admission, the importer must submit to the Administrator a written request for approval containing the following:

(1) Identification of the importer of the engine and the importer's address, telephone number, and taxpayer identification number;

(2) Identification of the engine's owner, the owner's address, telephone number, and taxpayer identification number;

(3) Identification of the engine including make, model, identification number, and original production year;

(4) Information indicating the provision in this subpart under which the engine is to be imported, including a demonstration of how it qualifies for the requested exemption;

(5) Identification of the place(s) where the engine is to be stored until EPA approval of the importer's application to the Administrator for final admission;

(6) Authorization for EPA enforcement officers to conduct inspections or testing otherwise permitted by the Act or regulations thereunder; and

(7) Such other information as is deemed necessary by the Administrator.

§ 94.804 Exemptions.

(a) *General provisions.* (1) Unless otherwise specified, any person may apply for the exemptions allowed by this section.

(2) Paragraph (b) of this section describes the provisions that apply to temporary exemptions. Paragraph (c) of this section describes provisions that apply to permanent exemptions.

(3) Applications for exemption under this section shall be mailed to the Designated Officer.

(b) Notwithstanding other requirements of this subpart, a nonconforming engine that qualifies for a temporary exemption under this paragraph (b) may be conditionally admitted into the United States if prior written approval for the conditional admission is obtained from the Administrator. Conditional admission is to be under bond. The Administrator may request that the U.S. Customs Service require a specific bond amount to ensure compliance with the requirements of the Act and this subpart. A written request for a temporary exemption from the Administrator shall contain the information required in § 94.803. Noncompliance with the provisions of this paragraph (b) will be considered unlawful importation and may result in the forfeiture of the total amount of the bond, exportation of the engine, and/or imposition of civil penalties.

(1) *Exemption for repairs or alterations.* A person may conditionally import under bond a nonconforming engine solely for purpose of repair(s) or alteration(s). The engine may not be operated in the United States other than for the sole purpose of repair or alteration or shipment to the point of repair or alteration and to the port of export. It may not be sold or leased in the United States and is to be exported upon completion of the repair(s) or alteration(s).

(2) *Testing exemption.* A person may conditionally import under bond a nonconforming engine for testing, subject to the requirements of § 94.905. A test engine may be operated in the United States provided that the operation is an integral part of the test. This exemption is limited to a period not exceeding one year from the date of importation unless a request is made by the appropriate importer, and subsequently granted by EPA, concerning the engine in accordance with § 94.905 for a subsequent one-year period.

(3) *Display exemptions.* A person may conditionally import under bond a nonconforming engine solely for display purposes, subject to both of the following requirements:

(i) A display engine may be imported by any person for purposes related to a business or the public interest. Such purposes do not include collections normally inaccessible or unavailable to the public on a daily basis, display of an engine at a dealership, private use, or other purpose that the Administrator determines is not appropriate for display exemptions. A display engine may not be sold or leased in the United States and may not be operated in the United States except for the operation incident and necessary to the display purpose.

(ii) A display exemption is granted for 12 months or for the duration of the display purpose, whichever is shorter. Extensions of up to 12 months each are available upon approval by the Administrator. In no circumstances, however, may the total period of exemption exceed 36 months.

(c) A nonconforming engine that qualifies for a permanent exemption under this paragraph (c) may be admitted into the United States if prior written approval is obtained from the Administrator. A written request for a permanent exemption from the Administrator shall contain the information required in § 94.803. Noncompliance with the provisions of this paragraph (c) will be considered unlawful importation and may result in the exportation of the engine and/or imposition of civil penalties.

(1) *National security exemption.* Notwithstanding any other requirement of this subpart, an engine may be permanently imported into the United States under the national security exemption found in § 94.908.

(2) *Competition exemption.* Notwithstanding any other requirement of this subpart, an engine may be permanently imported into the United States under the competition exemption found in § 94.906(c).

(3) *Incomplete marine engine exemption.* An engine that is intended to be modified prior to being placed into service as a marine engine may be imported in a nonconforming configuration, subject to the following provisions:

(i) The modified engine must be covered by a valid marine engine certificate issued under this part prior to importation and held by a post-manufacture marinizer. (Note: Prior to certification, manufacturers and post-manufacture marinizers may import uncertified engines for testing, as specified in paragraph (b)(2) of this section.)

(ii) The engine may not be placed into non-marine service prior to being installed in a vessel.

(iii) The importer must obtain written approval from the Administrator prior to admission.

(iv) The engine and engine container must be labeled as specified by the Administrator.

(v) A manufacturer importing an engine under this exemption must modify the engine to comply with the requirements of this part.

§ 94.805 Prohibited acts; penalties.

(a) The importation of an engine (including an engine incorporated in an imported marine vessel) which is not covered by a certificate of conformity other than in accordance with this subpart and the entry regulations of the U.S. Customs Service is prohibited. Failure to comply with this section is a violation of section 213(d) and section 203 of the Act.

(b) Unless otherwise permitted by this subpart, during a period of conditional admission, the importer of an engine may not:

(1) Operate the engine in the United States; or

(2) Sell or lease or offer the engine for sale or lease.

(c) An engine conditionally admitted pursuant to § 94.804 and not otherwise permanently exempted or excluded by the end of the period of conditional admission, or within such additional time as the Administrator and the U.S. Customs Service may allow, is deemed to be unlawfully imported into the United States in violation of section 213(d) and section 203 of the Act, unless the engine has been delivered to the U.S. Customs Service for export or other disposition under applicable Customs laws and regulations by the end of the period of conditional admission. An engine not so delivered is subject to seizure by the U.S. Customs Service.

(d) An importer who violates section 213(d) and section 203 of the Act is subject to a civil penalty under section 205 of the Act and § 94.1106. In addition to the penalty provided in the Act and § 94.1106, where applicable, a person or entity who imports an engine under the exemption provisions of § 94.804 and, who fails to deliver the engine to the U.S. Customs Service by the end of the period of conditional admission is liable for liquidated damages in the amount of the bond required by applicable Customs laws and regulations.

Subpart J—Exclusion and Exemption Provisions

§ 94.901 Purpose and applicability.

The provisions of this subpart identify excluded engines (i.e., engines not covered by the Act) and allow for the exemption of engines from certain provisions of this part. The applicability of the exclusions is described in § 94.903, and the applicability of the exemption allowances is described in §§ 94.904 through 94.909.

§ 94.902 Definitions.

The definitions of Subpart A of this part apply to this subpart.

§ 94.903 Exclusions.

(a) Upon written request with supporting documentation, EPA will make written determinations as to whether certain engines are excluded from applicability of this part. Any engines that are determined to be excluded are not subject to the regulations under this part. Requests to determine whether certain engines are excluded should be sent to the Designated Officer.

(b) EPA will maintain a list of models of engines that have been determined to be excluded from coverage under this part. This list will be available to the public and may be obtained by writing to the address in paragraph (a) of this section.

(c) In addition to the engines excluded in paragraph (a) of this section, certain engines are not subject to the requirements and prohibitions of this part because they are excluded from the definitions of ''marine engine'' in § 94.2.

§ 94.904 Exemptions.

(a) Except as specified otherwise in this subpart, the provisions of §§ 94.904 through 94.911 exempt certain new engines from the standards, other requirements, and prohibitions of this part, except for the requirements of this subpart and the requirements of § 94.1104. Additional requirements may apply for imported engines; these are described in subpart I of this part.

(b)(1) Any person may request a testing exemption subject to the provisions of § 94.905.

(2) Any engine manufacturer may request a national security exemption subject to the provisions of § 94.908.

(3) Engines manufactured for export purposes are exempt without application, subject to the provisions of § 94.909, except as otherwise specified by § 94.909.

(4) Manufacturer-owned engines are exempt without application, subject to the provisions of § 94.906(a).

(5) Display engines are exempt without application, subject to the provisions of § 94.906(b). This does not apply to imported engines (see § 94.804).

(6) Engines used solely for competition are exempt, subject to the provisions of § 94.906(c).

(7) Engines used on foreign trade vessels are exempt, subject to the provisions of § 94.906(d).

§ 94.905 Testing exemption.

(a)(1) The Administrator may exempt from the standards and/or other requirements and prohibitions of this part new engines that are being used solely for the purpose of conducting a test program. Any person requesting an exemption for the purpose of conducting a test program must demonstrate the following:

(i) That the proposed test program has a purpose which constitutes an appropriate basis for an exemption in accordance this section;

(ii) That the proposed test program necessitates the granting of an exemption;

(iii) That the proposed test program exhibits reasonableness in scope; and

(iv) That the proposed test program exhibits a degree of oversight and control consonant with the purpose of the test program and EPA's monitoring requirements.

(2) Paragraphs (b), (c), (d), and (e) of this section describe what constitutes a sufficient demonstration for each of the four elements identified in paragraphs (a)(1)(i) through (iv) of this section.

(b) With respect to the purpose of the proposed test program, an appropriate purpose would be research, investigations, studies, demonstrations, technology development, or training, but not national security. A concise statement of purpose is a required item of information.

(c) With respect to the necessity that an exemption be granted, necessity arises from an inability to achieve the stated purpose in a practicable manner without performing or causing to be performed one or more of the prohibited acts under § 94.1103. In appropriate circumstances, time constraints may be a sufficient basis for necessity, but the cost of certification alone, in the absence of extraordinary circumstances, is not a basis for necessity.

(d) With respect to reasonableness, a test program must exhibit a duration of reasonable length and affect a reasonable number of engines. In this regard, required items of information include:

(1) An estimate of the program's duration; and

(2) The maximum number of engines involved.

(e) With respect to control, the test program must incorporate procedures consistent with the purpose of the test and be capable of affording EPA monitoring capability. As a minimum, required items of information include:

(1) The technical nature of the testing;

(2) The location(s) of the testing;

(3) The time or work duration of the testing;

(4) The ownership arrangement with regard to the engines involved in the testing;

(5) The intended final disposition of the engines;

(6) The manner in which the engine identification numbers will be identified, recorded, and made available; and

(7) The means or procedure whereby test results will be recorded.

(f) A manufacturer of new engines may request a testing exemption to cover engines intended for use in test programs planned or anticipated over the course of a subsequent two-year period. Unless otherwise required by the Director, Engine Programs and Compliance Division, a manufacturer requesting such an exemption need only furnish the information required by paragraphs (a)(1) and (d)(2) of this section along with a description of the recordkeeping and control procedures that will be employed to assure that the engines are used for purposes consistent with paragraph (a) of this section.

(g) For engines being used for the purpose of developing a fundamentally new emission control technology related either to an alternative fuel or an aftertreatment device, the Administrator may exempt the engine from some or all of the applicable standards of this part for the full useful life of the engine, subject to the provisions of paragraphs (a) through (f) of this section.

§ 94.906 Manufacturer-owned exemption, display exemption, competition exemption, and foreign trade vessel exemption.

(a) *Manufacturer-owned exemption.* Any manufacturer-owned engine, as defined by § 94.2, is exempt from § 94.1103, without application, if the manufacturer complies with the following terms and conditions:

(1) The manufacturer must establish, maintain, and retain the following adequately organized and indexed information on each exempted engine:

(i) engine identification number;

(ii) Use of the engine on exempt status; and

(iii) Final disposition of any engine removed from exempt status.

(2) The manufacturer must provide right of entry and access to these records to EPA Enforcement Officers as outlined in § 94.208.

(3) The manufacturer must permanently affix a label to each engine on exempt status, unless the requirement is waived or an alternate procedure is approved by the Director, Engine Programs and Compliance Division. This label should:

(i) Be affixed in a readily visible portion of the engine;

(ii) Be attached in such a manner that cannot be removed without destruction or defacement;

(iii) State in the English language and in block letters and numerals of a color that contrasts with the background of the label, the following information:

(A) The label heading "Emission Control Information";

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement, engine family identification, and model year of engine; or person of office to be contacted for further information about the engine;

(D) The statement "This engine is exempt from the prohibitions of 40 CFR 94.1103."

(4) No provision of paragraph (a)(3) of this section prevents a manufacturer from including any other information it desires on the label.

(5) The engine is not used in revenue-generating service, or sold.

(b) *Display exemption.* An uncertified engine that is to be used solely for display purposes, and that will only be operated incident and necessary to the display purpose, and will not be sold unless an applicable certificate of conformity has been obtained for the engine, is exempt without request from the standards of this part. This does not apply to imported engines (see § 94.804).

(c) *Competition exemption.* The Administrator may exempt, upon request, engines that are intended by the manufacturer to be used solely for competition. Engines that are modified after they have been placed into service and are used solely for competition are exempt without request.

(d) *Foreign trade exemption.* (1) The Administrator may exempt, upon request of the vessel owner, engines used on U.S.-flagged vessels meeting the provisions of paragraph (d)(2) of this section.

(2) Vessel owners requesting an exemption under this paragraph (d) must demonstrate to the Administrator that:

(i) The vessel will spend less than 25 percent of its operating time within 320 nautical kilometers of U.S. territory; or

(ii) That it will not operate between two United States ports.

(3) For the purpose of this paragraph (d), the term "vessel owner" includes any entities that have contracted to purchase a new marine vessel.

(4) The engine manufacturer must label the engine, and must include on the label the following statement: "THIS ENGINE IS SUBJECT TO THE MARPOL ANNEX VI NO_X LIMITS AND IS INTENDED FOR USE SOLELY ON VESSELS THAT SERVICE FOREIGN PORTS AS DESCRIBED IN 40 CFR 94.906.", or a similar statement approved by the Administrator.

§ 94.907 Engine dressing exemption.

(a) This section applies to you if you are an engine manufacturer (this includes post-manufacture marinizers).

(b) The only requirements or prohibitions from this part that apply to an engine that is exempt under this section are in this section.

(c) The requirements and prohibitions of this part apply to all engines in the scope of § 94.1 that do not qualify for the engine dressing exemption.

(d) New marine engines that meets all the following criteria are exempt under this section:

(1) You must produce it by marinizing an engine covered by a valid certificate of conformity from one of the following programs:

(i) Heavy-duty highway engines (40 CFR part 86).

(ii) Land-based nonroad diesel engines (40 CFR part 89).

(iii) Locomotive engines (40 CFR part 92).

(2) The engine must have the label that required under 40 CFR part 86, 89, or 92.

(3) You must not make any changes to the certified engine that could reasonably be expected to increase its emissions. For example, if you make any of the following changes to one of these engines, you do not qualify for the engine dressing exemption:

(i) Change any fuel system parameters from the certified configuration.

(ii) Replace an original turbocharger.

(iii) Modify or design the marine engine cooling or aftercooling system so that temperatures or heat rejection rates are outside the original engine manufacturer's specified ranges.

(4) The engine model must not be primarily for marine applications. This means that total sales of the engine model, from all companies, must be mostly for non-marine applications.

(e) If you dress an engine under this exemption, you must do all of the following:

(1) Make sure the original engine label will remain clearly visible after installation in the vessel.

(2) Add a permanent supplemental label to the engine in a position where it will remain clearly visible after installation in the vessel. In your engine label, do the following:

(i) Include the heading: ''Marine Engine Emission Control Information''.

(ii) Include your full corporate name and trademark.

(iii) State: ''This engine was marinized without affecting its emission controls.''

(iv) State the date you finished marinizing the engine (month and year).

(3) Send a signed letter to the Designated Officer by the end of each calendar year (or less often if we tell you) with all the following information:

(i) Identify your full corporate name, address, and telephone number.

(ii) List the engine models you expect to produce under this exemption in the coming year.

(iii) State: ''We produce each listed engine model for marine application without making any changes that could increase its certified emission levels, as described in 40 CFR 94.907.''

(f) In general you may use up your inventory of engines that are not certified to new marine emission standards if they were originally manufactured before the date of the new standards. However, stockpiling these engines is a violation of § 94.1103(a)(1)(i)(A).

(g) If your engines do not meet the criteria listed in paragraphs (d)(2) through (d)(4) of this section, they will be subject to the standards and prohibitions of this part. Marinization without an exemption would be a violation of § 94.1103(a)(1) and/or the tampering prohibitions of the applicable land-based regulations (40 CFR Parts 86, 89, or 92).

(h)(1) If you are the original manufacturer and marinizer of an exempted engine, you must send us emission test data on the appropriate marine duty cycles. You can include the data in your application for certification or in the letter described in paragraph (e)(3) of this section.

(2) If you are the original manufacturer of an exempted engine that is marinized by a post-manufacture marinizer, you may be required to send us emission test data on the appropriate marine duty cycles. If such data are requested you will be allowed a reasonable amount of time to collect the data.

§ 94.908 National security exemption.

(a)(1) Any marine engine, otherwise subject to this part, that is used in a vessel that exhibits substantial features ordinarily associated with military combat such as armor, permanently affixed weaponry, specialized electronic warfare systems, unique stealth performance requirements, and/or unique combat maneuverability requirements and which will be owned and/or used by an agency of the federal government with the responsibility for national defense, will be exempt from the regulations in this subpart for reasons of national security. No request for this exemption is necessary.

(2) Manufacturers may request a national security exemption for any marine engine, otherwise subject to this part, which does not meet the conditions described in paragraph (a)(1) of this section. A manufacturer requesting a national security exemption must state the purpose for which the exemption is required and the request must be endorsed by an agency of the federal government charged with responsibility for national defense.

(b) EPA will maintain a list of models of marine engines (and the vessels which use them) that have been granted a national security exemption under paragraph (a)(2) of this section. This list will be available to the public and may be obtained by writing to the Designated Officer.

§ 94.909 Export exemptions.

(a) A new engine intended solely for export, and so labeled or tagged on the outside of any container and on the engine, is subject to the provisions of § 94.1103, unless the importing country has new marine engine emission standards which differ from EPA standards.

(b) For the purpose of paragraph (a) of this section, a country having no standards whatsoever is deemed to be a country having emission standards which differ from EPA standards.

(c) It is a condition of any exemption for the purpose of export under paragraph (a) of this section, that such exemption is void ab initio with respect to a new engine intended solely for export, where such engine is sold, or offered for sale, to an ultimate purchaser or otherwise distributed or introduced into commerce in the United States for purposes other than export.

§ 94.910 Granting of exemptions.

(a) If upon completion of the review of an exemption request made pursuant to § 94.905 or § 94.908, EPA determines it is appropriate to grant such an exemption, a memorandum of exemption is to be prepared and submitted to the person requesting the exemption. The memorandum is to set forth the basis for the exemption, its scope, and such terms and conditions as are deemed necessary. Such terms and conditions generally include, but are not limited to, agreements by the applicant to conduct the exempt activity in the manner described to EPA, create and maintain adequate records accessible to EPA at reasonable times, employ labels for the exempt engines setting forth the nature of the exemption, take appropriate measures to assure that the terms of the exemption are met, and advise EPA of the termination of the activity and the ultimate disposition of the engines.

(b) Any exemption granted pursuant to paragraph (a) of this section is deemed to cover any subject engine only to the extent that the specified terms and conditions are complied with. A breach of any term or condition causes the exemption to be void ab initio with respect to any engine. Consequently, the causing or the performing of an act prohibited under § 94.1103(a)(1) or (a)(3), other than in strict conformity with all terms and conditions of this exemption, renders the person to whom the exemption is granted, and any other person to whom the provisions of § 94.1103(a) are applicable, liable to suit under sections 204 and 205 of the Act.

§ 94.911 Submission of exemption requests.

Requests for exemption or further information concerning exemptions and/or the exemption request review procedure should be addressed to the Designated Officer.

Subpart K—[Reserved]

Subpart L—General Enforcement Provisions and Prohibited Acts

§ 94.1101 Applicability.

The requirements of this subpart are applicable to all persons with respect to engines subject to the provisions of Subpart A of this part.

§ 94.1102 Definitions.

The definitions of subpart A of this part apply to this subpart.

§ 94.1103 Prohibited acts.

(a) The following acts and the causing thereof are prohibited:

(1)(i)(A) In the case of a manufacturer of new engines, the sale, the offering for sale, the introduction into commerce, the delivery for introduction into commerce, or the distribution in commerce of any new engine that is subject to the standards of this part, unless such engine is covered by a certificate of conformity issued (and in effect) under regulations found in this part.

(B) The manufacture of a engine for the purpose of an act listed in paragraph (a)(1)(i)(A) of this section unless such engine is covered by a certificate of conformity issued (and in effect) under regulations found in this part prior to its introduction into commerce.

(ii) In the case of any person, except as provided in Subpart I of this part, the importation into the United States of any engine manufactured on or after the implementation date of the applicable emission limits for the relevant engine, unless such engine is covered by a certificate of conformity issued (and in effect) under regulations found in this part.

(2)(i) For a person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under this part.

(ii) For a person to fail or refuse to permit entry, testing, or inspection authorized under this part.

(iii) For a person to fail or refuse to perform tests, or to have tests performed as required by this part.

(iv) For a person to fail to establish or maintain records as required under this part.

(3)(i) For a person to remove or render inoperative a device or element of design installed on or in a engine in compliance with regulations under this part, or to set any adjustable parameter to a setting outside of the range specified by the manufacturer, as approved in the application for certification by the Administrator.

(ii) For a person to manufacture, sell or offer to sell, or install, a part or component intended for use with, or as part of, a engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative a device or element of design installed on or in a engine in compliance with regulations issued under this part, and where the person knows or should know that the part or component is being offered for sale or installed for this use or put to such use.

(iii) for a person to deviate from the provisions of § 94.11 when rebuilding an engine (or rebuilding a portion of an engine or engine system).

(4) For a manufacturer of a new engine subject to standards prescribed under this part:

(i) To sell, offer for sale, or introduce or deliver for introduction into commerce, a new engine unless the manufacturer has complied with the requirements of § 94.1107.

(ii) To sell, offer for sale, or introduce or deliver for introduction into commerce, a new engine unless all required labels and tags are affixed to the engine in accordance with § 94.212.

(iii) To fail or refuse to comply with the requirements of § 94.1108.

(iv) Except as provided in § 94.211, to provide directly or indirectly in any communication to the ultimate purchaser or a subsequent purchaser that the coverage of a warranty under the Act is conditioned upon use of a part, component, or system manufactured by the manufacturer or a person acting for the manufacturer or under its control, or conditioned upon service performed by such persons.

(v) To fail or refuse to comply with the terms and conditions of the warranty under § 94.1107.

(5) For a manufacturer of marine vessels to distribute in commerce, sell, offer for sale, or deliver for introduction into commerce a new vessel containing an engine not covered by a certificate of conformity applicable for an engine model year the same as or later than the calendar year in which the manufacture of the new vessel is initiated. (Note: For the purpose of this paragraph (a)(5), the manufacture of a vessel is initiated when the keel is laid, or the vessel is at a similar stage of construction.)

(6) For any person to install a recreational marine engine in a vessel that is manufactured on or after the implementation date of the applicable standards and that is not a recreational vessel.

(b) For the purposes of enforcement of this part, the following apply:

(1) Nothing in paragraph (a)(3) of this section is to be construed to require the use of any manufacturer's parts in maintaining or repairing a engine.

(2)(i) Actions for the purpose of repair or replacement of a device or element of design or any other item are not considered prohibited acts under paragraph (a)(3)(i) of this section if the action is a necessary and temporary procedure, the device or element is replaced upon completion of the procedure, and the action results in the proper functioning of the device or element of design.

(ii) Actions for emergency purposes are not considered prohibited acts under paragraph (a)(3)(i) of this section if the action is a necessary and temporary procedure and the device or element is replaced such that the proper functioning of the device or element of design is restored as soon as possible.

(3) Where the Administrator determines that no engine that is certified to the requirements of this part is produced by any manufacturer with the appropriate physical or performance characteristics to repower a vessel, the Administrator may allow an engine manufacturer to introduce into commerce a replacement engine without complying with all of the otherwise applicable requirements of this part. Such engine shall not be subject to the prohibitions of paragraph (a)(1) of this section, provided that:

(i) The engine requiring replacement is not certified or is certified to emission standards that are less stringent than those in effect when the replacement engine is built; and

(ii) The engine manufacturer or its agent takes ownership and possession of the engine being replaced in partial exchange for the replacement engine; and

(iii) The replacement engine is clearly labeled with the following language, or similar alternate language approved by the Administrator: ‘‘THIS ENGINE DOES NOT COMPLY WITH FEDERAL MARINE ENGINE EMISSION REQUIREMENTS. SALE OR INSTALLATION OF THIS ENGINE FOR ANY PURPOSE OTHER THAN AS A REPLACEMENT ENGINE FOR AN ENGINE MANUFACTURED PRIOR TO JANUARY 1 [INSERT APPROPRIATE YEAR] IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY’’; and

(iv) In cases where an engine is to be imported for replacement purposes under the provisions of this paragraph (b)(3) of this section, the term ‘‘engine manufacturer’’ shall not apply to an individual or other entity that does not possess a current Certificate of Conformity issued by EPA under this part; and

(v) Where the replacement engine is intended to replace an engine that is certified to emission standards that are less stringent than those in effect when the replacement engine is built, the replacement engine shall be identical in all material respects to a certified configuration of the same or later model year as the engine being replaced; and

(vi) Engines sold pursuant to the provisions of this paragraph will neither generate nor use emission credits and will not be part of any accounting under the averaging, banking and trading program.

§ 94.1104 General enforcement provisions.

(a) *Information collection provisions.* (1)(i) Every manufacturer of new engines and other persons subject to the requirements of this part must establish and maintain records, perform tests, make reports and provide information the Administrator may reasonably require to determine whether the manufacturer or other person has acted or is acting in compliance with this part or to otherwise carry out the provisions of this part, and must, upon request of an officer or employee duly designated by the Administrator, permit the officer or employee at reasonable times to have access to and copy such records. The manufacturer shall comply in all respects with the requirements of subpart E of this part.

(ii) Every manufacturer or owner of engines exempted from the standards or requirements of this part must establish and maintain records, perform tests, make reports and provide information the Administrator may reasonably require regarding the emissions of such engines.

(2) For purposes of enforcement of this part, an officer or employee duly designated by the Administrator, upon presenting appropriate credentials, is authorized:

(i) To enter, at reasonable times, any establishment of the manufacturer, or of any person whom the manufacturer engaged to perform any activity required under paragraph (a)(1) of this section, for the purposes of inspecting or observing any activity conducted pursuant to paragraph (a)(1) of this section; and

(ii) To inspect records, files, papers, processes, controls, and facilities used in performing an activity required by paragraph (a)(1) of this section, by the manufacturer or by a person whom the manufacturer engaged to perform the activity.

(b) *Exemption provision.* The Administrator may exempt a new engine from § 94.1103 upon such terms and conditions as the Administrator may find necessary for the purpose of export, research, investigations, studies, demonstrations, or training, or for reasons of national security, or for other purposes allowed by subpart J of this part.

(c) *Importation provision.* (1) A new engine, offered for importation or imported by a person in violation of § 94.1103 is to be refused admission into the United States, but the Secretary of the Treasury and the Administrator may, by joint regulation, provide for deferring a final determination as to admission and authorizing the delivery of such a engine offered for import to the owner or consignee thereof upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that the engine will be brought into conformity with the standards, requirements, and limitations applicable to it under this part.

(2) If a engine is finally refused admission under this paragraph (c), the Secretary of the Treasury shall cause disposition thereof in accordance with the customs laws unless it is exported, under regulations prescribed by the Secretary, within 90 days of the date of notice of the refusal or additional time as may be permitted pursuant to the Treasury regulations.

(3) Disposition in accordance with the customs laws may not be made in such manner as may result, directly or indirectly, in the sale, to the ultimate consumer, of a new engine that fails to comply with applicable standards of the Administrator under this part.

(d) *Export provision.* A new engine intended solely for export, and so labeled or tagged on the outside of the container if used and on the engine, shall be subject to the provisions of § 94.1103, except that if the country that is to receive the engine has emission standards that differ from the standards prescribed under subpart A of this part, then the engine must comply with the standards of the country that is to receive the engine.

(e) *Recordkeeping.* Except where specified otherwise, records required by this part must be kept for eight (8) years.

§ 94.1105 Injunction proceedings for prohibited acts.

(a) The district courts of the United States have jurisdiction to restrain violations of § 94.1103(a).

(b) Actions to restrain violations of § 94.1103(a) must be brought by and in the name of the United States. In an action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

§ 94.1106 Penalties.

(a) *Violations.* A violation of the requirements of this subpart is a violation of the applicable provisions of the Act, including sections 213(d) and 203, and is subject to the penalty provisions thereunder.

(1) A person who violates § 94.1103(a)(1), (a)(4), (a)(5), or (a)(6), or a manufacturer or dealer who violates § 94.1103(a)(3)(i) or (iii) is subject to a civil penalty of not more than $25,000 for each violation unless modified by the Debt Collection Improvement Act (31 U.S.C. chapter 37) and/or regulations issued there under.

(2) A person other than a manufacturer or dealer who violates § 94.1103(a)(3)(i) or (iii) or any person who violates § 94.1103(a)(3)(ii) is subject to a civil penalty of not more than $2,500 for each violation unless modified by the Debt Collection Improvement Act and/or regulations issued thereunder.

(3) A violation with respect to § 94.1103(a)(1), (a)(3)(i), (a)(4), or (a)(5) constitutes a separate offense with respect to each engine.

(4) A violation with respect to § 94.1103(a)(3)(ii) constitutes a separate offense with respect to each part or component. Each day of a violation with respect to § 94.1103(a)(5) constitutes a separate offense.

(5) A person who violates § 94.1103(a)(2) or (a)(5) is subject to a civil penalty of not more than $25,000 per day of violation unless modified by the Debt Collection Improvement Act and/or regulations issued thereunder.

(b) *Civil actions.* The Administrator may commence a civil action to assess and recover any civil penalty under paragraph (a) of this section.

(1) An action under this paragraph (b) may be brought in the district court of the United States for the district in which the defendant resides or has the Administrator's principal place of business, and the court has jurisdiction to assess a civil penalty.

(2) In determining the amount of a civil penalty to be assessed under this paragraph (b), the court is to take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with Title II of the Act, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require.

(3) In any such action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

(c) *Administrative assessment of certain penalties.*—(1) *Administrative penalty authority.* In lieu of commencing a civil action under paragraph (b) of this section, the Administrator may assess any civil penalty prescribed in paragraph (a) of this section, except that the maximum amount of penalty sought against each violator in a penalty assessment proceeding shall not exceed $200,000, unless the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty assessment. Any such determination by the Administrator and the Attorney General is not subject to judicial review. Assessment of a civil penalty shall be by an order made on the record after opportunity for a hearing held in accordance with the procedures found at 40 CFR Part 22. The Administrator may compromise, or remit, with or without conditions, any administrative penalty which may be imposed under this section.

(2) *Determining amount.* In determining the amount of any civil penalty assessed under this paragraph (c), the Administrator shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with Title II of the Act, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require.

(3) *Effect of administrator's action.* (i) Action by the Administrator under this paragraph (c) does not affect or limit the Administrator's authority to enforce any provisions of the Act; except that any violation with respect to which the Administrator has commenced and is diligently prosecuting an action under this paragraph (c), or for which the Administrator has issued a final order not subject to further judicial review and for which the violator has paid a penalty assessment under this paragraph shall not be the subject of a civil penalty action under paragraph (b) of this section.

(ii) No action by the Administrator under this paragraph (c) shall affect a person's obligation to comply with a section of this part.

(4) *Finality of order.* An order issued under this paragraph (c) is to become final 30 days after its issuance unless a petition for judicial review is filed under paragraph (c)(5) of this section.

(5) *Judicial review.* A person against whom a civil penalty is assessed in accordance with this paragraph (c) may seek review of the assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred, in which such person resides, or where the person's principal place of business is located, within the 30-day period beginning on the date a civil penalty order is issued. The person shall simultaneously send a copy of the filing by certified mail to the Administrator and the Attorney General. The Administrator shall file in the court within 30 days a certified copy, or certified index, as appropriate, of the record on which the order was issued. The court is not to set aside or remand any order issued in accordance with the requirements of this paragraph (c) unless substantial evidence does not exist in the record, taken as a whole, to support the finding of a violation or unless the Administrator's assessment of the penalty constitutes an abuse of discretion, and the court is not to impose additional civil penalties unless the Administrator's assessment of the penalty constitutes an abuse of discretion. In any proceedings, the United States may seek to recover civil penalties assessed under this section.

(6) *Collection.* (i) If any person fails to pay an assessment of a civil penalty imposed by the Administrator as provided in this part after the order making the assessment has become final or after a court in an action brought under paragraph (c)(5) of this section has entered a final judgment in favor of the Administrator, the Administrator shall request that the Attorney General bring a civil action in an appropriate district court to recover the amount assessed (plus interest at rates established pursuant to section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) from the date of the final order or the date of final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of the penalty is not subject to review.

(ii) A person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in paragraph (c)(6)(i) of this section shall be required to pay, in addition to that amount and interest, the United States' enforcement expenses, including attorney's fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which the failure to pay persists. The nonpayment penalty is an amount equal to ten percent of the aggregate amount of that person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

§ 94.1107 Warranty provisions.

(a) The manufacturer of each engine must warrant to the ultimate purchaser and each subsequent purchaser or owner that the engine is designed, built, and equipped so as to conform at the time of sale with applicable regulations under section 213 of the Act, and is free from defects in materials and workmanship which cause such engine to fail to conform with applicable regulations for its warranty period (as determined under § 94.10).

(b) For the purposes of this section, the owner of any engine warranted under this part is responsible for the proper maintenance of the engine. Proper maintenance includes replacement and/or service, as needed, at the owner's expense at a service establishment or facility of the owner's choosing, of all parts, items, or devices which were in general use with engines prior to 1999. For diesel engines, this would generally include replacement or cleaning of the fuel delivery and injection system.

§ 94.1108 In-use compliance provisions.

(a) Effective with respect to engines subject to the requirements of this part:

(1) If the Administrator determines that a substantial number of any class or category of engines, although properly maintained and used, do not conform to the regulations prescribed under section 213 of the Act when in actual use throughout their useful life period (as defined under § 94.2), the Administrator shall immediately notify the manufacturer of such nonconformity and require the manufacturer to submit a plan for remedying the nonconformity of the engines with respect to which such notification is given.

(i) The manufacturer's plan shall provide that the nonconformity of any such engines which are properly used and maintained will be remedied at the expense of the manufacturer.

(ii) If the manufacturer disagrees with such determination of nonconformity and so advises the Administrator, the Administrator shall afford the manufacturer and other interested persons an opportunity to present their views and evidence in support thereof at a public hearing. Unless, as a result of such hearing, the Administrator withdraws such determination of nonconformity, the Administrator shall, within 60 days after the completion of such hearing, order the manufacturer to provide prompt notification of such nonconformity in accordance with paragraph (a)(2) of this section.

(2) Any notification required to be given by the manufacturer under paragraph (a)(1) of this section with

respect to any class or category of engines shall be given to ultimate purchasers, subsequent purchasers (if known), and dealers (as applicable) in such manner and containing such information as required in Subparts E and H of this part.

(3)(i) The certifying manufacturer shall furnish with each new engine written instructions for the proper maintenance and use of the engine by the ultimate purchaser as required under § 94.211.

(ii) The instruction under paragraph (a)(3)(i) of this section must not include any condition on the ultimate purchaser's using, in connection with such engine, any component or service (other than a component or service provided without charge under the terms of the purchase agreement) which is identified by brand, trade, or corporate name. Such instructions also must not directly or indirectly distinguish between service performed by the franchised dealers of such manufacturer, or any other service establishments with which such manufacturer has a commercial relationship, and service performed by independent engine repair facilities with which such manufacturer has no commercial relationship.

(iii) The prohibition of paragraph (a)(3)(ii) of this section may be waived by the Administrator if:

(A) The manufacturer satisfies the Administrator that the engine will function properly only if the component or service so identified is used in connection with such engine; and

(B) The Administrator finds that such a waiver is in the public interest.

(iv) In addition, the manufacturer shall indicate by means of a label or tag permanently affixed to the engine that the engine is covered by a certificate of conformity issued for the purpose of assuring achievement of emission standards prescribed under section 213 of the Act. This label or tag shall also contain information relating to control of emissions as prescribed under § 94.212.

(b) The manufacturer bears all cost obligation any dealer incurs as a result of a requirement imposed by paragraph (a) of this section. The transfer of any such cost obligation from a manufacturer to a dealer through franchise or other agreement is prohibited.

(c) If a manufacturer includes in an advertisement a statement respecting the cost or value of emission control devices or systems, the manufacturer shall set forth in the statement the cost or value attributed to these devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The Secretary of Labor, and his or her representatives, has the same access for this purpose to the books, documents, papers, and records of a manufacturer as the Comptroller General has to those of a recipient of assistance for purposes of section 311 of the Act.

Appendix I to Part 94—Emission-Related Engine Parameters and Specifications

I. Basic Engine Parameters—Reciprocating Engines.
1. Compression ratio.
2. Type of air aspiration (natural, Roots blown, supercharged, turbocharged).
3. Valves (intake and exhaust).
a. Head diameter dimension.
b. Valve lifter or actuator type and valve lash dimension.
4. Camshaft timing.
a. Valve opening—intake exhaust (degrees from TDC or BDC).
b. Valve closing—intake exhaust (degrees from TDC or BDC).
c. Valve overlap (degrees).
5. Ports—two stroke engines (intake and/or exhaust).
a. Flow area.
b. Opening timing (degrees from TDC or BDC).
c. Closing timing (degrees from TDC or BDC).
II. Intake Air System.
1. Roots blower/supercharger/turbocharger calibration.
2. Charge air cooling.
a. Type (air-to-air; air-to-liquid).
b. Type of liquid cooling (engine coolant, dedicated cooling system).
c. Performance (charge air delivery temperature (°F) at rated power and one other power level under ambient conditions of 80°F and 110°F, and 3 minutes and 15 minutes after selecting rated power, and 3 minutes and 5 minutes after selecting other power level).
3. Temperature control system calibration.
4. Maximum allowable inlet air restriction.
III. Fuel System.
1. General.
a. Engine idle speed.
2. Fuel injection—compression ignition engines.
a. Control parameters and calibrations.
b. Transient enrichment system calibration.
c. Air-fuel flow calibration.
d. Altitude compensation system calibration.
e. Operating pressure(s).
f. Injector timing calibration.
IV. Engine Cooling System.
1. Thermostat calibration.
V. Exhaust System.
1. Maximum allowable back pressure.
VI. Exhaust Emission Control System.
1. Air injection system.
a. Control parameters and calibrations.
b. Pump flow rate.
2. EGR system.
a. Control parameters and calibrations.
b. EGR valve flow calibration.
3. Catalytic converter system.
a. Active surface area.
b. Volume of catalyst.
c. Conversion efficiency.
4. Backpressure.
VII. Crankcase Emission Control System.
1. Control parameters and calibrations.
2. Valve calibrations.
VIII. Auxiliary Emission Control Devices (AECD).
1. Control parameters and calibrations.
2. Component calibration(s).

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federal register

Wednesday
December 29, 1999

Part IV

Department of Education

Women's Educational Equity Act Program (WEEA); Inviting Applications for New Awards for Fiscal Year (FY) 2000; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.083A and B]

Women's Educational Equity Act Program (WEEA); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Purpose of Program: To promote gender equity in education; to promote equity in education for women and girls who suffer from multiple forms of discrimination based on sex and race, ethnic origin, limited English proficiency, disability or age; and to provide financial assistance to enable educational agencies to meet the requirements of title IX of the Education Amendments of 1972.

Eligible Applicants: Public agencies, private nonprofit agencies, organizations, institutions, student groups, community groups, and individuals.

Deadline for Transmittal of Applications: February 14, 2000.

Note: We must receive all applications on or before this date. This requirement takes exception to the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.102. Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, this exception to EDGAR makes procedural changes only and does not establish new substantive policy. Therefore, under 5 U.S.C 533 (b)(A), the Secretary has determined that proposed rulemaking is not required.

Deadline for Intergovernmental Review: April 14, 2000.

Applications Available: December 29, 1999.

Available Funds: $906,883.

Estimated Range of Awards: Implementation Grants: $90,000–$200,000; Research and Development Grants: $75,000–$150,000.

Estimated Average Size of Awards: Implementation Grants: $145,000; Research and Development Grants: $125,000.

Estimated Number of Awards: Implementation Grants: 4–8; Research and Development Grants: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months. Funds available under this competition would be used for the first 12 months of a project.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99.

SUPPLEMENTARY INFORMATION: The Department will award two types of grants: (1) grants for the *implementation* of gender equity programs in schools; and (2) *research and development* grants to develop model equity programs. Examples of authorized activities under the program include—

Implementation Grants

(a) Assisting educational agencies and institutions to implement policies and practices to comply with title IX of the Education Amendments of 1972;

(b) Training for teachers, counselors, administrators, and other school personnel, especially preschool and elementary school personnel, in gender-equitable teaching and learning practices;

(c) Leadership training for women and girls to develop professional and marketable skills to compete in the global marketplace, improve self-esteem, and benefit from exposure to positive role models;

(d) School-to-work transition programs, guidance and counseling activities, and other programs to increase opportunities for women and girls to enter a technologically demanding workplace and, in particular, to enter highly skilled, high-paying careers in which women and girls have been underrepresented;

(e) Enhancing educational and career opportunities for those women and girls who suffer multiple forms of discrimination, based on sex and on race, ethnic origin, limited-English proficiency, disability, socioeconomic status, or age;

(f) Assisting pregnant students and students rearing children to remain in or to return to secondary school, graduate, and prepare their preschool children to start school;

(g) Evaluating exemplary model programs to assess the ability of such programs to advance educational equity for women and girls;

(h) Introduction into the classroom of textbooks, curricula, and other materials designed to achieve equity for women and girls;

(i) Programs and policies to address sexual harassment and violence against women and girls and to ensure that educational institutions are free from threats to the safety of students and personnel;

(j) Nondiscriminatory tests of aptitude and achievement and of alternative assessments that eliminate biased assessment instruments from use;

(k) Programs to increase educational opportunities, including higher education, vocational training, and other educational programs for low-income women, including underemployed and unemployed women, and women receiving Aid to Families with Dependent Children benefits;

(l) Programs to improve representation of women in educational administration at all levels; and

(m) Planning, development, and initial implementation of—

(1) Comprehensive institution-or districtwide evaluation to assess the presence or absence of gender equity in educational settings;

(2) Comprehensive plans for implementation of equity programs in State and local educational agencies and institutions of higher education, including community colleges; and

(3) Innovative approaches to school-community partnerships for educational equity.

Research and Development Activities

(a) Research and development of innovative strategies and model training programs for teachers and other education personnel;

(b) The development of high-quality and challenging assessment instruments that are nondiscriminatory;

(c) The development and evaluation of model curricula, textbooks, software, and other educational materials to ensure the absence of gender stereotyping and bias;

(d) The development of instruments and procedures that employ new and innovative strategies to assess whether diverse educational settings are gender equitable;

(e) The development of instruments and strategies for evaluation, dissemination, and replication of promising or exemplary programs designed to assist local educational agencies in integrating gender equity in their educational policies and practices;

(f) Updating high-quality educational materials previously developed through Women's Educational Equity Act (WEEA) grants;

(g) The development of policies and programs to address and prevent sexual harassment and violence to ensure that educational institutions are free from threats to safety of students and personnel;

(h) The development and improvement of programs and activities to increase opportunity for women, including continuing educational activities, vocational education, and programs for low-income women, including underemployed and unemployed women, and women receiving Aid to Families with Dependent Children; and

(i) The development of guidance and counseling activities, including career education programs, designed to ensure gender equity.

Priority for Implementation Grants

Under 34 CFR 75.105(b) and (c), the Secretary gives a competitive preference to applications that meet the following priority found in 20 U.S.C. 7235(b) by awarding bonus points depending on the extent to which the applicant meets the priority:

Projects submitted by applicants that have not received assistance under the WEEA Program (5 points).

Invitational Priority for Implementation Grants

Under 34 CFR 75.105(b) and (c), the Secretary invites and encourages applications that meet the following invitational priority for implementation grants: Projects that develop and implement programs which will promote gender equity in the math and science areas, including projects that promote equity in math and science for women and girls who suffer from multiple forms of discrimination based on sex and race, ethnic origin, limited English proficiency, disability or age. The Secretary is particularly interested in applications that meet this priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Selection Criteria for Implementation Grants

The Secretary evaluates applications for implementation grants on the basis of the following criteria which are taken either from the statute or from 34 CFR 75.210. The maximum possible score for each criterion is indicated in parentheses with the criterion. The Secretary awards up to 100 points for all of the criteria.

(a) *Effectively achieving the purposes of WEEA.* (20 points).

Under 34 CFR 75.209 and 20 U.S.C. 7235(a), the Secretary reviews each application to determine how well the project will effectively achieve the purposes of the WEEA Program.

Note: Applicants should consider the following statutory provisions when responding to this criterion. Under 20 U.S.C. 7232, the purpose of the WEEA program is: (a) to promote gender equity in education in the United States; (b) to provide financial assistance to enable educational agencies and institutions to meet the requirements of title IX of the Educational Amendments of 1972; and (c) to promote equity in education for women and girls who suffer from multiple forms of discrimination based on sex, race, ethnic origin, limited-English proficiency, disability, or age.

(b) *Project as a component of a comprehensive plan.* (5 points).

Under 34 CFR 75.209 and 20 U.S.C. 7235(a)(2)(C), the Secretary reviews each application to determine the extent to which the project is a significant component of a comprehensive plan for educational equity and compliance with title IX of the Educational Amendments of 1972 in the particular school district, institution of higher education, vocational-technical institution, or other educational agency or institution.

(c) *Implementing an institutional change strategy.* (5 points).

Under 34 CFR 75.209 and 20 U.S.C. 7235(a)(2)(D), the Secretary reviews each application to determine the extent to which the project implements an institutional change strategy with long-term impact that will continue as a central activity of the applicant after the WEEA grant has been terminated.

(d) *Need for project.* (10 points). (1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(ii) The extent to which the proposed project will enhance educational and career opportunities for those women and girls who suffer forms of discrimination, based on sex and race, ethnic origin, limited English-proficiency, disability, and socioeconomic status, or age.

(e) *Significance.* (5 points). (1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(ii) The likely utility of the products (such as information, materials, processes, or techniques) that will result from the proposed project, including the potential for their being used effectively in a variety of other settings.

(iii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in employment, independent living services, or both, as appropriate.

(f) *Quality of the project design.* (15 points). (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(g) *Quality of project services.* (10 points). (1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.

(ii) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(h) *Quality of project personnel.* (5 points). (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(i) *Adequacy of resources.* (5 points). (1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(ii) The extent to which the budget is adequate to support the proposed project.

(j) *Quality of the management plan.* (10 points). (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(iii) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(k) *Quality of the project evaluation.* (10 points). (1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Note: Applicants should consider the following statutory provision when responding to this criterion. Under 20 U.S.C. 7234 (1), applicants for WEEA funds are required to set forth policies and procedures that will ensure a comprehensive evaluation of the grant activities, including an evaluation of the practices, policies, and materials used by the applicant and an evaluation or estimate of the continued significance of the work of the project following completion of the award period.

Priority for Research and Development Grants

Under 34 CFR 75.105 (b) and (c), the Secretary gives a competitive preference to applications that meet the following priority found in 20 U.S.C. 7235(b) by awarding bonus points depending on the extent to which the applicant meets the priority:

Projects submitted by applicants that have not received assistance under the WEEA Program (5 points).

Selection Criteria for Research and Development Grants

The Secretary evaluates applications for research and development grants on the basis of the following criteria which are taken either from the statute or from 34 CFR 75.210. The maximum possible score for each criterion is indicated in parentheses with the criterion. The Secretary awards up to 100 points for all of the criteria.

(a) *Effectively achieving the purposes of WEEA.* (20 points)

Under 34 CFR 75.209 and 20 U.S.C. 7235(a), the Secretary reviews each application to determine how well the project will effectively achieve the purposes of the WEEA Program.

Note: Applicants should consider the following statutory provisions when responding to this criterion. Under 20 U.S.C. 7232, the purpose of the WEEA program is: (a) to promote gender equity in education in the United States; (b) to provide financial assistance to enable educational agencies and institutions to meet the requirements of title IX of the Educational Amendments of 1972; and (c) to promote equity in education for women and girls who suffer from multiple forms of discrimination based on sex, race, ethnic origin, limited-English proficiency, disability, or age.

(b) *Addressing multiple discrimination.* (5 points)

Under 34 CFR 75.209 and 20 U.S.C. 7235(a)(2)(A), the Secretary reviews each application to determine the quality of the applicant's plan for addressing the needs of women and girls of color and women and girls with disabilities.

(a) *Need for project.* (10 points). (1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude or severity of the problem to be addressed by the proposed project.

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(b) *Significance.* (10 points). (1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The national significance of the proposed project.

(ii) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(iii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(e) *Quality of the project design.* (20 points). (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(iv) The quality of methodology to be employed in the proposed project.

(e) *Quality of project personnel.* (10 points). (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(g) *Adequacy of resources.* (5 points). (1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(ii) The extent to which the budget is adequate to support the proposed project.

(h) *Quality of the management plan.* (10 points. (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, time lines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(iii) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(i) *Quality of the project evaluation.* (10 points). (1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Note: Applicants should consider the following statutory provision when responding to this criterion. Under 20 U.S.C. 7234(1), applicants for WEEA funds are required to set forth policies and procedures that will ensure a comprehensive evaluation of the grant activities, including an evaluation of the practices, policies, and materials used by the applicant and an evaluation or estimate of the continued significance of the work of the project following completion of the award period.

For Information Contact: Edith Harvey, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3E106, Washington, D.C. 20202–6140. Telephone (202) 260–1393. 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.

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Dated: December 23, 1999.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Scaleshell mussel; comments due by 1-7-00; published 11-29-99

LABOR DEPARTMENT

Employment Standards Administration

Federal Coal Mine Health and Safety Act of 1969, as amended:

Black Lung Benefits Act—

Individual claims by former coal miners and dependents processing and adjudication; regulations clarification and simplification; comments due by 1-6-00; published 11-18-99

MERIT SYSTEMS PROTECTION BOARD

Practice and procedure:

Employee choice between appeal procedure and grievance procedure; agency requirement to provide notice when it takes appealable action against employee; comments due by 1-3-00; published 11-1-99

NUCLEAR REGULATORY COMMISSION

Production and utilization facilities; domestic licensing:

Antitrust review authority; clarification; comments due by 1-3-00; published 11-3-99

TRANSPORTATION DEPARTMENT

Coast Guard

Anchorage regulations:

New York; comments due by 1-4-00; published 11-5-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 1-6-00; published 12-7-99

Bell Helicopter Textron Canada; comments due by 1-3-00; published 11-4-99

BFGoodrich; comments due by 1-7-00; published 12-8-99

Boeing; comments due by 1-6-00; published 11-22-99

British Aerospace; comments due by 1-6-00; published 12-7-99

Eurocopter France; comments due by 1-4-00; published 11-5-99

Fokker; comments due by 1-5-00; published 12-6-99

McDonnell Douglas; comments due by 1-6-00; published 11-22-99

New Piper Aircraft, Inc.; comments due by 1-4-00; published 11-5-99

Raytheon; comments due by 1-3-00; published 11-16-99

Rolls-Royce plc; comments due by 1-3-00; published 11-2-99

Class E airspace; comments due by 1-3-00; published 11-19-99

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Controlled corporations; recognition of gain on certain distributions of stockor securities in connection with an acquisition; comments due by 1-5-00; published 8-24-99

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 106th Congress has been completed and will resume when bills are enacted into law during the second session of the 106th Congress, which convenes on January 24, 2000.

A Cumulative List of Public Laws for the first session of the 106th Congress will be published in the **Federal Register** on December 30, 1999.

Last List December 21, 1999.