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Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

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

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Presidential Documents

Title 3—

The President

Executive Order 13078 of March 13, 1998

Increasing Employment of Adults With Disabilities

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to increase the employment of adults with disabilities to a rate that is as close as possible to the employment rate of the general adult population and to support the goals articulated in the findings and purpose section of the Americans with Disabilities Act of 1990, it is hereby ordered as follows:

Section 1. Establishment of National Task Force on Employment of Adults with Disabilities.

(a) There is established the "National Task Force on Employment of Adults with Disabilities" ("Task Force"). The Task Force shall comprise the Secretary of Labor, Secretary of Education, Secretary of Veterans Affairs, Secretary of Health and Human Services, Commissioner of Social Security, Secretary of the Treasury, Secretary of Commerce, Secretary of Transportation, Director of the Office of Personnel Management, Administrator of the Small Business Administration, the Chair of the Equal Employment Opportunity Commission, the Chairperson of the National Council on Disability, the Chair of the President's Committee on Employment of People with Disabilities, and such other senior executive branch officials as may be determined by the Chair of the Task Force.

(b) The Secretary of Labor shall be the Chair of the Task Force; the Chair of the President's Committee on Employment of People with Disabilities shall be the Vice Chair of the Task Force.

(c) The purpose of the Task Force is to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate that is as close as possible to that of the general adult population. The Task Force shall develop and recommend to the President, through the Chair of the Task Force, a coordinated Federal policy to reduce employment barriers for persons with disabilities. Policy recommendations may cover such areas as discrimination, reasonable accommodations, inadequate access to health care, lack of consumer-driven, long-term supports and services, transportation, accessible and integrated housing, telecommunications, assistive technology, community services, child care, education, vocational rehabilitation, training services, job retention, on-the-job supports, and economic incentives to work. Specifically, the Task Force shall:

(1) analyze the existing programs and policies of Task Force member agencies to determine what changes, modifications, and innovations may be necessary to remove barriers to work faced by people with disabilities;

(2) develop and recommend options to address health insurance coverage as a barrier to employment for people with disabilities;

(3) subject to the availability of appropriations, analyze State and private disability systems (e.g., workers' compensation, unemployment insurance, private insurance, and State mental health and mental retardation systems) and their effect on Federal programs and employment of adults with disabilities;

(4) consider statistical and data analysis, cost data, research, and policy studies on public subsidies, employment, employment discrimination, and rates of return-to-work for individuals with disabilities;

(5) evaluate and, where appropriate, coordinate and collaborate on, research and demonstration priorities of Task Force member agencies related to employment of adults with disabilities;

(6) evaluate whether Federal studies related to employment and training can, and should, include a statistically significant sample of adults with disabilities;

(7) subject to the availability of appropriations, analyze youth programs related to employment (e.g., Employment and Training Administration programs, special education, vocational rehabilitation, school-to-work transition, vocational education, and Social Security Administration work incentives and other programs, as may be determined by the Chair and Vice Chair of the Task Force) and the outcomes of those programs for young people with disabilities;

(8) evaluate whether a single governmental entity or program should be established to provide computer and electronic accommodations for Federal employees with disabilities;

(9) consult with the President's Committee on Mental Retardation on policies to increase the employment of people with mental retardation and cognitive disabilities; and

(10) recommend to the President any additional steps that can be taken to advance the employment of adults with disabilities, including legislative proposals, regulatory changes, and program and budget initiatives.

(d)(1) The members of the Task Force shall make the activities and initiatives set forth in this order a high priority within their respective agencies within the levels provided in the President's budget.

(2) The Task Force shall issue its first report to the President by November 15, 1998. The Task Force shall issue a report to the President on November 15, 1999, November 15, 2000, and a final report on July 26, 2002, the 10th anniversary of the initial implementation of the employment provisions of the Americans with Disabilities Act of 1990. The reports shall describe the actions taken by, and progress of, each member of the Task Force in carrying out this order. The Task Force shall terminate 30 days after submitting its final report.

(e) As used herein, an adult with a disability is a person with a physical or mental impairment that substantially limits at least one major life activity.

Sec. 2. Specific activities by Task Force members and other agencies.

(a) To ensure that the Federal Government is a model employer of adults with disabilities, by November 15, 1998, the Office of Personnel Management, the Department of Labor, and the Equal Employment Opportunity Commission shall submit to the Task Force a review of Federal Government personnel laws, regulations, and policies and, as appropriate, shall recommend or implement changes necessary to improve Federal employment policy for adults with disabilities. This review shall include personnel practices and actions such as: hiring, promotion, benefits, retirement, workers' compensation, retention, accessible facilities, job accommodations, layoffs, and reductions in force.

(b) The Departments of Justice, Labor, Education, and Health and Human Services shall report to the Task Force by November 15, 1998, on their work with the States and others to ensure that the Personal Responsibility and Work Opportunity Reconciliation Act is carried out in accordance with section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, so that individuals with disabilities and their families can realize the full promise of welfare reform by having an equal opportunity for employment.

(c) The Departments of Education, Labor, Commerce, and Health and Human Services, the Small Business Administration, and the President's Committee on Employment of People with Disabilities shall work together and report to the Task Force by November 15, 1998, on their work to

develop small business and entrepreneurial opportunities for adults with disabilities and strategies for assisting low-income adults, including those with disabilities to create small businesses and micro-enterprises. These same agencies, in consultation with the Committee for Purchase from People Who Are Blind or Severely Disabled, shall assess the impact of the Randolph-Sheppard Act vending program and the Javits-Wagner-O'Day Act on employment and small business opportunities for people with disabilities.

(d) The Departments of Transportation and Housing and Urban Development shall report to the Task Force by November 15, 1998, on their examination of their programs to see if they can be used to create new work incentives and to remove barriers to work for adults with disabilities.

(e) The Departments of Justice, Education, and Labor, the Equal Employment Opportunity Commission, and the Social Security Administration shall work together and report to the Task Force by November 15, 1998, on their work to propose remedies to the prevention of people with disabilities from successfully exercising their employment rights under the Americans with Disabilities Act of 1990 because of the receipt of monetary benefits based on their disability and lack of gainful employment.

(f) The Bureau of Labor Statistics of the Department of Labor and the Census Bureau of the Department of Commerce, in cooperation with the Departments of Education and Health and Human Services, the National Council on Disability, and the President's Committee on Employment of People with Disabilities shall design and implement a statistically reliable and accurate method to measure the employment rate of adults with disabilities as soon as possible, but no later than the date of termination of the Task Force. Data derived from this methodology shall be published on as frequent a basis as possible.

(g) All executive agencies that are not members of the Task Force shall: (1) coordinate and cooperate with the Task Force; and (2) review their programs and policies to ensure that they are being conducted and delivered in a manner that facilitates and promotes the employment of adults with disabilities. Each agency shall file a report with the Task Force on the results of its review on November 15, 1998.

Sec. 3. Cooperation. All efforts taken by executive departments and agencies under sections 1 and 2 of this order shall, as appropriate, further partnerships and cooperation with public and private sector employers, organizations that represent people with disabilities, organized labor, veteran service organizations, and State and local governments whenever such partnerships and cooperation are possible and would promote the employment and gainful economic activities of individuals with disabilities.

Sec. 4. Judicial Review. This order does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

William J. Clinton

THE WHITE HOUSE,
March 13, 1998.

[FR Doc. 98–7139
Filed 3–17–98; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2610

RIN 3209–AA20

Amendments to the Office of Government Ethics Rules Under the Equal Access to Justice Act

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; technical amendments.

SUMMARY: The Office of Government Ethics is amending its rules under the Equal Access to Justice Act on adversary administrative adjudicatory proceedings to conform with the revisions enacted as part of the Contract with America Advancement Act of 1996, which increased the ceiling on attorney and agent fees and added small entities as eligible parties to a new category of awards based on covered proceedings involving any excessive demands, and is also making a couple of minor clarifying and paperwork revisions.

EFFECTIVE DATE: March 18, 1998.

ADDRESSES: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: Ms. Grill.

FOR FURTHER INFORMATION CONTACT: Arielle H. Grill, Attorney-Advisor, Office of General Counsel and Legal Policy, Office of Government Ethics, telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is amending its rules at 5 CFR part 2610 for covered adversary administrative proceedings under the Equal Access to Justice Act to implement changes made to that law in subtitle C of the Small Business Regulatory Enforcement Fairness Act of 1996 under the Contract with America Advancement Act of 1996, Pub. L. 104–121. One change reflects that, for covered proceedings commenced on or after March 29, 1996, the general ceiling on attorney and agent fees was raised from $75.00 per hour to $125.00 per hour. The section on rulemaking on the maximum fee rate is also being revised to include agent fees along with attorney fees. In addition, an award is permitted if the demand of the Office for relief is substantially in excess of the decision in an adversary adjudication and is unreasonable when compared with such decision, under the facts and circumstances of the case, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Furthermore, a small entity as defined in 5 U.S,C. 601 is declared to be an eligible party for such relief. Finally, an out-of-date citation to a former provision in the Paperwork Reduction Act regulations of the Office of Management and Budget at 5 CFR part 1320 is being removed.

In this rulemaking, OGE is implementing these statutory changes as to any covered administrative proceedings before it by revising §§ 2610.102, 2610.105, 2610.106, 2610.107, 2610.108, 2610.201 and 2610.204 of OGE's equal access rules. This is not an executive branchwide regulation, as only covered OGE administrative proceedings are affected. Moreover, OGE notes that, to date, no administrative equal access claims have been filed with it.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b) and (d), as Director of the Office of Government Ethics, I find good cause exists for waiving the general notice of proposed rulemaking, public comment procedures, and 30-day delay in effectiveness as to these revisions. The notice, comment, and delayed effective date are being waived because these technical amendments to the OGE equal access regulation concern matters of agency organization, procedure, and practice. Furthermore, it is in the public interest that the new, higher attorney fees provisions and other changes as to OGE administrative proceedings covered under the Equal Access to Justice Act, as revised, be implemented as soon as possible.

Executive Order 12866

In promulgating these technical amendments to its equal access rules, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These amendments have not been reviewed by the Office of Management and Budget under that Executive Order, as they are not deemed "significant" thereunder.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities because it only affects certain covered OGE administrative proceedings and OGE has not to date received any claims as to such proceedings under the Equal Access to Justice Act.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this technical amendments rulemaking does not contain any information collection requirements that require the approval of the Office of Management and Budget, since the collections of information called for under this rule are expected to involve nine or fewer persons each year. Amended § 2610.201(f) of this rule contains a statement informing the public of this matter.

List of Subjects in 5 CFR Part 2610

Administrative practice and procedure, Claims, Conflict of interests, Equal access to justice, Government employees.

Approved: March 12, 1998.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Office of Government Ethics is amending part 2610 of chapter XVI of 5 CFR as follows:

PART 2610—[AMENDED]

1. The authority citation for part 2610 continues to read as follows:

Authority: 5 U.S.C. 504(c)(1); 5 U.S.C. App. (Ethics in Government Act of 1978).

2. Section 2610.102 is amended by revising the second sentence and adding a new third sentence to read as follows:

§ 2610.102 Purpose.

* * * An eligible party may receive an award when it prevails over the Office, unless the Office's position in the proceeding was substantially justified or special circumstances make an award unjust. An eligible party may also receive an award when the demand of the Office is substantially in excess of the decision in the adversary adjudication and is unreasonable when compared with such decision, under the facts and circumstances of the case, unless the party has committed a willful violation of law or otherwise acted in bad faith or special circumstances make an award unjust. * * *

3. Section 2610.105 is amended by removing the word "and" at the end of paragraph (b)(4), by removing the word "any" at the beginning of paragraph (b)(5) and adding in its place the word "Any," by removing the period at the end of paragraph (b)(5) and adding in its place a semicolon followed by the word "and," and by adding a new paragraph (b)(6) to read as follows:

§ 2610.105 Eligibility of applicants.

* * * * *

(b)(6) For purposes of § 2610.106(b), a small entity as defined in 5 U.S.C. 601.

* * * * *

4. Section 2610.106 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, by revising newly redesignated paragraph (d), and by adding a new paragraph (b) to read as follows:

§ 2610.106 Standards for awards.

* * * * *

(b) If, in a proceeding arising from an Office action to enforce an applicant's compliance with a statutory or regulatory requirement, the demand of the Office is substantially in excess of the decision in the proceeding and is unreasonable when compared with that decision under the facts and circumstances of the case, the applicant shall be awarded the fees and other expenses related to defending against the excessive demand, unless the applicant has committed a willful violation of law or otherwise acted in bad faith or special circumstances make an award unjust. The burden of proof that the demand of the Office is substantially in excess of the decision and is unreasonable when compared with such decision is on the applicant. As used in this paragraph, "demand" means the express demand of the Office which led to the adversary adjudication, but it does not include a recitation by the Office of the maximum statutory penalty in the administrative complaint, or elsewhere when accompanied by an express demand for a lesser amount. Fees and expenses awarded under this paragraph shall be paid only as a consequence of appropriations provided in advance.

* * * * *

(d) An award under this part will be reduced or denied if the Office's position was substantially justified in law and fact, if the applicant has unduly or unreasonably protracted the proceeding, if the applicant has falsified the application (including documentation) or net worth exhibit, or if special circumstances make the award unjust.

§ 2610.107 [Amended]

5. Section 2610.107 is amended by removing the dollar amount "$75.00" in the first sentence of paragraph (b) and adding in its place the dollar amount "$125.00."

§ 2610.108 [Amended]

6. Section 2610.108 is amended by:

a. Revising the heading to read "Rulemaking on maximum rate for attorney and agent fees.";

b. Amending the first sentence of paragraph (a) by adding the words "or agents" between the words "attorneys" and "qualified" in the parentheses, adding the words "or agent" between the words "attorney" and "fees" outside the parentheses, and by removing the dollar amount "$75.00" and adding in its place the dollar amount "$125.00."; and

c. Amending the first sentence of paragraph (b) by adding the words "or agent" between the words "attorney" and "fees".

7. Section 2610.201 is amended by removing the last sentence of paragraph (f) and by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

§ 2610.201 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. Unless the applicant is an individual, the application shall further state the number of employees of the applicant and describe briefly the type and purpose of its organization or business. The application shall also:

(1) Show that the applicant has prevailed and identify the position of the Office in the proceeding that the applicant alleges was not substantially justified; or

(2) Show that the demand by the Office in the proceeding was substantially in excess of, and was unreasonable when compared with, the decision in the proceeding.

(b) The application shall also include, for purposes of § 2610.106 (a) or (b), a statement that the applicant's net worth does not exceed $2,000,000 (for individuals) or $7,000,000 (for all other applicants, including their affiliates) or alternatively, for purposes of § 2610.106(b) only, a declaration that the applicant is a small entity as defined in 5 U.S.C. 601. However, an applicant may omit the statement concerning its net worth if:

* * * * *

8. Section 2610.204 is amended by revising paragraph (a) and the first sentence of paragraph (c) to read as follows:

§ 2610.204 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding. An application may also be filed when the demand of the Office is substantially in excess of the decision in the proceeding and is unreasonable when compared with such decision. In no case may an application be filed later than 30 days after the Office of Government Ethics' final disposition of the proceeding.

* * * * *

(c) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed or has been subjected to a demand from the Office substantially in excess of the decision in the adversary adjudication and unreasonable when compared to that decision, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy. * * *

[FR Doc. 98–6986 Filed 3–17–98; 8:45 am]

BILLING CODE 6345–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–34–AD; Amendment 39–10411; AD 98–06–32]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS 332C, L, and L1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter France Model AS 332C, L, and L1 helicopters. This action requires greasing and inspecting main rotor blade horn eye bolts (eye bolts), and replacing certain eye bolt bearings (bearings) with airworthy bearings. This amendment is prompted by one report of abnormally high amplitude inflight vibrations due to failure of a bearing. The actions specified in this AD are intended to prevent failure of a bearing, due to premature wear caused by an improper axial pre-load, which could result in loss of main rotor blade pitch control and subsequent loss of control of the helicopter.

DATES: Effective April 2, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 2, 1998.

Comments for inclusion in the Rules Docket must be received on or before May 18, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–34–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter France Model AS 332C, L, and L1 helicopters. The DGAC advises that, within 50 hours, for eye bolts that were installed before September 1, 1997 and have less than 500 hours time-in-service (TIS), the bearings should be greased and inspected, and removed if (1) the expelled grease has a "blackish" color or contains metal particles; or (2) the rotational torque exceeds 30,000 millimeters-grams (2.655 inches-pounds).

Eurocopter France has issued Eurocopter France Telex Service 39/0206/1997, dated July 25, 1997, (containing Eurocopter France AS 332 Telex Service No. 01.00.52 R1) which specifies an inspection of the eye bolts, and replacement of the bearings, if necessary. The DGAC classified this service telex as mandatory and issued DGAC AD 97–174–063(AB), dated August 1, 1997, in order to assure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France 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 DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS 332C, L, and L1 helicopters of the same type design registered in the United States, this AD is being issued to prevent failure of a bearing due to premature wear caused by an improper axial pre-load, which could result in loss of main rotor blade pitch control and subsequent loss of control of the helicopter. This AD requires, within 50 hours TIS, for any eye bolt currently installed, or prior to installing any replacement eye bolt, that has less than 500 hours TIS, greasing and inspecting the eye bolt assembly, and replacing unairworthy bearings with airworthy bearings prior to further flight. The actions are required to be accomplished in accordance with the service telex described previously.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore greasing and inspecting the eye bolt assembly, and replacing unairworthy bearings with airworthy bearings is required prior to further flight and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public 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 that involves requirements affecting flight safety and, thus, was not preceded by notice and an 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 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 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 No. 97–SW–34–AD." The postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined

further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, 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 a new airworthiness directive to read as follows:

AD 98–06–32 EUROCOPTER FRANCE: Amendment 39–10411. Docket No. 97–SW–34–AD.

Applicability: Model AS 332C, L, and L1 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a main rotor blade horn eye bolt (eye bolt) bearing due to premature wear caused by an improper axial pre-load, which could result in loss of main rotor blade pitch control and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 50 hours time-in-service (TIS) after the effective date of this AD for any eye bolt currently installed, or prior to installing any replacement eye bolt, that has less than 500 hours TIS, grease and inspect the eye bolt assembly in accordance with paragraphs CC.1 through CC.3 of Eurocopter France Telex Service 39/0206/1997, dated July 25, 1997, (containing Eurocopter France AS 332 Telex Service No. 01.00.52 R1). If the expelled grease has a "blackish" color or contains metal particles, or if the rotational torque on the eye bolt exceeds 30,000 millimeter grams (2.655 inch-lbs.), replace the eye bolt bearings with airworthy eye bolt bearings in accordance with paragraph CC.4B of the Telex Service.

(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, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(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 helicopter to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Eurocopter France Telex Service 39/0206/1997, dated July 25, 1997. 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 American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 2, 1998.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) Telegraphic AD 97–174–063(AB), dated August 1, 1997.

Issued in Fort Worth, Texas, on March 11, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–6966 Filed 3–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 29165; Amdt. No. 408]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its

timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days. 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. For the same reason, the FAA certifies that this amendment 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 95

Airspace, Navigation (air).

Issued in Washington, D.C. on March 13, 1998.

Tom E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC.

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

[Amendment 408 effective date, April 23, 1998]

From	To	MEA
§ 95.6009 VOR Federal Airway 9 is Amended to Read in Part		
Madison, WI VORTAC	Oshkosh, WI VORTAC	3000
§ 95.6013 VOR Federal Airway 13 is Amended to Read in Part		
Rich Mountain, OK VORTAC	*Hades, AR FIX	**4600
*5000–MRA		
**3900–MOCA		
Fort Smith, AR VORTAC	*Cheso, AR FIX	**3400
*5000–MRA		
**2700–MOCA		
Cheso, AR FIX	Barkk, AR FIX	3500
Barkk, AR FIX	Razorback, AR VORTAC	3500
§ 95.6069 VOR Federal Airway 69 is Amended to Read in Part		
Pine Bluff, AR VOR/DME	Billi, AR FIX	2000
§ 95.6076 VOR Federal Airway 76 is Amended to Read in Part		
Welch, TX FIX	Patts, TX FIX	*6100
*5200–MOCA		
§ 95.6081 VOR Federal Airway 81 is Amended to Read in Part		
Patts, TX FIX	*Welch, TX FIX	**6100
*7000–MRA		
**5200–MOCA		
§ 95.6107 VOR Federal Airway 107 is Amended to Read in Part		
Fillmore, CA VORTAC	Pirue, CA FIX	
	SE BND	*8000
	NW BND	*9000
*7200–MOCA		
Pirue, CA FIX	Reyes, CA FIX	*11000
*9200–MOCA		
Derbb, CA FIX	Avenal, CA VORTAC	*7000
*6500–MOCA		
§ 95.6120 VOR Federal Airway 120 is Amended to Read in Part		
Fryre, SD FIX	Sioux Falls, SD VORTAC	3700

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS—Continued

[Amendment 408 effective date, April 23, 1998]

From	To	MEA
§ 95.6124 VOR Federal Airway 124 is Amended to Read In Part		
Bonham, TX VORTAC	Paris, TX VOR/DME	2400
Deens, AR FIX	Hot Springs, AR VOR/DME	*5000
*2600–MOCA		
Lonns, AR FIX	Little Rock, AR VORTAC	2300
Little Rock, AR VORTAC	Tafte, AR FIX	*4000
*1600–MOCA		
Tafte, AR FIX	*Hille, AR FIX	**6000
*6000–MRA		
**1500–MOCA		
§ 95.6278 VOR Federal Airway 278 is Amended to Read In Part		
Guthrie, TX VORTAC	Nifde, TX FIX	*4500
*3000–MOCA		
Nifde, TX FIX	Poste, TX FIX	*3300
*2600–MOCA		
Poste, TX FIX	Bowie, TX VORTAC	*3300
*2500–MOCA		
Bonham, TX VORTAC	Paris, TX VOR/DME	2400
Texarkana, AR VORTAC	Warlo, AR FIX	2200
Warlo, AR FIX	Locus, AR FIX	*3000
*1700–MOCA		
Locus, AR FIX	Monticello, AR VOR/DME	*2500
*1600–MOCA		
Monticello, AR VOR/DME	Greenville, MS VOR/DME	*2000
*1500–MOCA		
§ 95.6319 VOR Federal Airway 319 is Amended to Read In Part		
Eyaks, AR FIX	Johnstone Point, AK VORTAC	5000
§ 95.6341 VOR Federal Airway 341 is Amended to Read In Part		
Madison, WI VORTAC	Oshkosh, WI VORTAC	3000
§ 95.6369 VOR Federal Airway 369 is Amended to Read In Part		
Navasota, TX VORTAC	Bilee, TX FIX	*2300
*1800–MOCA	MAA–17500	
Bilee, TX FIX	Groesbeck, TX VOR/DME	*2300
*1800–MOCA	MAA–17500	
Groesbeck, TX VOR/DME	Dallas/Fort Worth, TX VORTAC	3400
	MAA–17500	
§ 95.6480 VOR Federal Airway 480 is Amended to Read In Part		
Kipnuk, AK VOR/DME	Bethel, AK VORTAC	2000
§ 95.6532 VOR Federal Airway 532 is Amended to Read In Part		
Fort Smith, AR VORTAC	*Akins, OK FIX	2500
*3000–MRA		
Akins, OK FIX	Okmulgee, OK VOR/DME	*3000
*2200–MOCA		
§ 95.6573 VOR Federal Airway 573 is Amended to Read In Part		
Texarkana, AR VORTAC	Pikes, AR FIX	*3500
*1800–MOCA		
Pikes, AR FIX	Marki, AR FIX	*3500
*2100–MOCA		
Lonns, AR FIX	Little Rock, AR VORTAC	2300

From	To	MEA	MAA
§ 95.7104 Jet Route No. 104 is Amended to Read In Part			
San Simon, AZ VORTAC	Socorro, NM VORTAC	20000	45000

From	To	Changeover points	
		Distance	From
§ 95.8003 VOR Federal Airway Changeover Points Airway Segment V–16 is Amended to Read in Part			
Texarkana, AR VORTAC	Pine Bluff, AR VOR/DME	62	Texarkana
V–124 is Amended to Delete			
Hot Springs, AR VOR/DME			

[FR Doc. 98–7027 Filed 3–17–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Amoxicillin Trihydrate and Clavulanate Potassium

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Pfizer, Inc. The supplemental NADA's provide for oral use amoxicillin trihydrate and clavulanate potassium tablets and suspension for treatment of dogs for periodontal infections due to susceptible strains of aerobic and anaerobic bacteria.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: Mary E. Reese, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20857, 301–594–1617.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed supplemental NADA's 55–099 and 55–101 that provide for oral use of amoxicillin trihydrate and clavulanate potassium tablets and suspension for treatment of dogs for periodontal infections due to susceptible strains of aerobic and anaerobic bacteria. The products are limited to use by or on the order of a licensed veterinarian. The supplemental NADA's are approved as of December 23, 1997, and the regulations are amended in 21 CFR 520.88g and 520.88h to reflect the approval. The basis for approval is discussed in the freedom of information summary.

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

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), these approvals for nonfood-producing animals qualify for 3 years of marketing exclusivity beginning December 23, 1997, because the supplemental applications contain substantial evidence of the effectiveness of the drug involved, or any studies of animal safety, required for approval of the applications and conducted or sponsored by the applicant. Three years of marketing exclusivity applies only to use of Clavamox® tablets and suspension in dogs for treatment of periodontal infections caused by susceptible strains of aerobic and anaerobic bacteria.

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

List of Subjects in 21 CFR Part 520

Animal drugs.

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

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

2. Section 520.88g is amended in paragraph (c)(1)(ii) by adding a new sentence at the end of the paragraph to read as follows:

§ 520.88g Amoxicillin trihydrate and clavulanate potassium film-coated tablets.

* * * * *

(c) * * *

(1) * * *

(ii) * * * Treatment of periodontal infections due to susceptible strains of aerobic and anaerobic bacteria.

* * * * *

3. Section 520.88h is amended in paragraph (c)(1)(ii) by adding a new sentence at the end of the paragraph to read as follows:

§ 520.88h Amoxicillin trihydrate and clavulanate potassium for oral suspension.

* * * * *

(c) * * *

(1) * * *

(ii) * * * Treatment of periodontal infections due to susceptible strains of aerobic and anaerobic bacteria.

* * * * *

Dated: February 27, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–6907 Filed 3–17–98; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Desoxycorticosterone Pivalate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Novartis Animal Health US, Inc. The NADA provides for use of desoxycorticosterone pivalate as replacement therapy for the mineralocorticoid deficit in dogs with primary adrenocortical insufficiency.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1612.

SUPPLEMENTARY INFORMATION: Novartis Animal Health US, Inc., P.O. Box 26402, Greensboro, NC 27404–6402, is the sponsor of NADA 141–029 that provides for the use of Percorten™-V (desoxycorticosterone pivalate) as replacement therapy for the mineralocorticoid deficit in dogs with primary adrenocortical insufficiency. The drug is limited to use by or on the order of a licensed veterinarian. The NADA is approved as of January 12, 1998, and the regulations are amended by adding new 21 CFR 522.535 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

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

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval for nonfood-producing animals qualifies for 5 years of marketing exclusivity beginning January 12, 1998, because no active ingredient of the drug (including any salt or ester of the active ingredient) has been approved in any other application.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

2. New § 522.535 is added to read as follows:

§ 522.535 Desoxycorticosterone pivalate.

(a) *Specifications.* Each milliliter of sterile aqueous suspension contains 25 milligrams of desoxycorticosterone pivalate.

(b) *Sponsor.* See No. 058198 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Conditions of use*—(1) *Dogs*—(i) *Amount.* Dosage requirements are variable and must be individualized on the basis of the response of the patient to therapy. Initial dose of 1 milligram per pound (0.45 kilogram) of body weight every 25 days, intramuscularly. Usual dose is 0.75 to 1.0 milligram per pound of body weight every 21 to 30 days.

(ii) *Indications for use.* For use as replacement therapy for the mineralocorticoid deficit in dogs with primary adrenocortical insufficiency.

(iii) *Limitations.* For intramuscular use only. Do not use in pregnant dogs, dogs suffering from congestive heart disease, severe renal disease, or edema. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) [Reserved]

Dated: February 6, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–6911 Filed 3–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 522 and 556

Implantation or Injectable Dosage Form New Animal Drugs; Colistimethate Sterile Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Alpharma Inc. The NADA provides for subcutaneous use of colistimethate sodium powder, reconstituted in aqueous solution, in the neck of 1- to 3-day-old chickens.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1644.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed NADA 141–069 that provides for use of First Guard™ Sterile Powder (colistimethate sodium), reconstituted in sterile saline or sterile water for injection, for subcutaneous injection in the neck of 1- to 3-day-old chickens for control of early mortality associated with *Escherichia coli* organisms susceptible to colistin. The drug is restricted to use by or on the order of a licensed veterinarian. The NADA is approved as of January 13, 1998, and the regulations are amended by adding new § 522.468 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, the regulations are amended by adding new § 556.167 to reflect that a tolerance for residues of colistimethate in edible chicken tissues is not required. The drug is a therapeutic product administered to 1- to 3-day-old chickens at the equivalent of 0.2 milligrams of colistin activity per chicken. At 28 days post-treatment, the earliest possible time broiler chickens would be considered marketable, total residues were calculated to be at least 36 times below the safe concentration level.

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

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval for food-producing animals qualifies for 5 years of marketing exclusivity beginning January 13, 1998, because no active ingredient of the drug (including any ester or salt thereof) has been previously approved in any other application filed under section 512(b)(1) of the act.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen

in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

2. Section 522.468 is added to read as follows:

§ 522.468 Colistimethate sodium powder for injection.

(a) *Specifications.* Each vial contains colistimethate sodium equivalent to 10 grams colistin activity and mannitol to be reconstituted with 62.5 milliliters sterile saline or sterile water for injection. The resulting solution contains colistimethate sodium equivalent to 133 milligrams per milliliter colistin activity.

(b) *Sponsor.* See 046573 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Conditions of use.* (1) 1- to 3-day-old chickens.

(i) *Dosage.* 0.2 milligram colistin activity per chicken.

(ii) *Indications for use.* Control of early mortality associated with *Escherichia coli* organisms susceptible to colistin.

(iii) *Limitations.* For subcutaneous injection in the neck of 1- to 3-day-old chickens. Not for use in laying hens producing eggs for human consumption. Do not use in turkeys. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) [Reserved]

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

4. Section 556.167 is added to read as follows:

§ 556.167 Colistimethate.

A tolerance for residues of colistimethate in the edible tissues of chickens is not required.

Dated: February 22, 1998.

Michael J. Blackwell,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 98–6909 Filed 3–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Narasin, Bambermycins, and Roxarsone

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Hoechst Roussel Vet. The NADA provides for using approved single ingredient Type A medicated articles to make Type C medicated broiler feeds containing narasin, bambermycins, and roxarsone.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2604.

SUPPLEMENTARY INFORMATION: Hoechst Roussel Vet, 30 Independence Blvd., P.O. Box 4915, Warren, NJ 07059, filed NADA 140–843 that provides for using approved single ingredient Type A medicated articles, Monteban® (45 grams (g) narasin activity per pound (/lb)), Flavomycin® (4 and 10 g bambermycins activity/lb), and 3–Nitro® (45.4, 90, and 227 g roxarsone/lb), to make Type C medicated broiler feeds containing 54 to 72 g narasin, 1 to 2 g bambermycins, and 22.7 to 45.4 g roxarsone/ton of feed. The Type C medicated broiler feed is used for the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. mivati*, *E. acervulina*, *E. maxima*, and *E. brunetti*, and for increased rate of weight gain, improved feed efficiency, and improved pigmentation in broiler chickens. NADA 140–843 is approved as of March 18, 1998.

Accordingly §§ 558.363 and 558.366 (21 CFR 558.363 and 558.366) are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary. In addition, 21 CFR 558.95(d)(5) is amended by adding new paragraph (d)(5)(iii) to provide a cross-reference to the 3-way combination drug Type C medicated feed.

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

This approval is for use of approved Type A medicated articles to make combination Type C medicated feeds. One ingredient, roxarsone, is a Category II drug as defined in 21 CFR 558.3(b)(1)(ii). As provided in 21 CFR 558.4(b), an approved form FDA 1900 is required for making a Type B or Type C medicated feed as in this application. Under section 512(m) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(m)), as amended by the Animal Drug Availability Act of 1996 (Pub. L. 104–250), medicated feed applications have been replaced by a requirement for feed mill licenses. Therefore, use of narasin, bambermycins, and roxarsone Type A medicated articles to make Type C medicated feeds as provided in NADA 140–843 requires a feed mill license rather than an approved FDA Form 1900.

Under section 512(c)(2)(F)(ii) of the act, this approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning March 18, 1998 because the application contains substantial evidence of the effectiveness of the drug involved, any studies of animal safety or, in the case of food producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval and conducted or sponsored by the applicant.

FDA has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner

of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

2. Section 558.95 is amended by adding paragraph (d)(5)(iii) to read as follows:

§ 558.95 Bambermycins.

* * * * *

(d) * * *

(5) * * *

(iii) Narasin and roxarsone as in § 558.363.

3. Section 558.363 is amended by revising paragraph (a), redesignating paragraph (c) as paragraph (d) and reserving paragraph (c), and by adding paragraph (d)(1)(vii), to read as follows:

§ 558.363 Narasin.

(a) *Approvals.* Type A medicated articles containing specified levels of narasin approved for sponsors identified in § 510.600(c) of this chapter for use as in paragraph (d) of this section are as follows:

(1) To 000986: 36, 45, 54, 72, and 90 grams per pound, paragraph (d)(1)(i) of this section.

(2) To 000986: 36, 45, 54, 72, and 90 grams per pound, with 10, 20, 50, and 80 percent roxarsone, paragraph (d)(1)(ii) of this section.

(3) To 000986: 36 grams per pound, with 36 grams per pound nicarbazin, paragraph (d)(1)(iii) of this section.

(4) To 012799: 36, 45, 54, 72, and 90 grams per pound, with 2 and 10 grams per pound bambermycins, paragraph (d)(1)(iv) of this section.

(5) To 012799: 45 grams per pound, with 4 and 10 grams per pound bambermycins, and 45.4, 90, and 227 grams per pound roxarsone, paragraph (d)(1)(vii) of this section.

* * * * *

(d) * * *

(1) * * *

(vii) *Amount per ton.* Narasin 54 to 72 grams, bambermycins 1 to 2 grams, and roxarsone 22.7 to 45.4 grams.

(A) *Indications for use.* For prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. mivati, E. acervulina, E. maxima,* and *E. brunetti,* and for increased rate of weight gain, improved feed efficiency, and improved pigmentation in broiler chickens.

(B) *Limitations.* For broiler chickens only. Feed continuously as sole ration. Do not feed to laying hens. Do not allow adult turkeys or horses or other equines access to formulations containing narasin. Ingestion of narasin by these animals has been fatal. Use as sole source of organic arsenic. Poultry should have access to drinking water at all times. Drug overdosage or lack of water intake may result in leg weakness or paralysis. Withdraw 5 days before slaughter. Narasin as provided by 000986 in § 510.600(c) of this chapter, bambermycins by 012799, and roxarsone by 046573.

* * * * *

§ 558.366 [Amended]

4. Section 558.366 *Nicarbazin* is amended, in paragraph (c) in the table in the first entry, under the column "Limitations" by removing "558.363(c)(1)(iii)" and by adding in its place "558.363(d)(1)(iii)."

Dated: February 22, 1998.

Michael J. Blackwell,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 98–6905 Filed 3–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8739]

RIN 1545–AV09

IRS Adoption Taxpayer Identification Numbers; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document contains corrections to Treasury Decision 8739, which was published in the Federal Register on Monday, November 24, 1997 (62 FR 62518) relating to taxpayer identifying numbers.

DATES: This correction is effective November 24, 1997.

FOR FURTHER INFORMATION CONTACT: Michael L. Gompertz, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of these corrections are under section 6109 of the Internal Revenue Code.

Need for Correction

As published, TD 8739 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final and temporary regulations (TD 8739), which was the subject of FR Doc. 97–30550, is corrected as follows:

§ 301.6109–1 [Corrected]

1. On page 62520, column 2, § 301.6109–1(h)(2)(iii), line 1, the language "(iii) Paragraphs (a)(1)(i), (a)(1)(ii)(A)," is corrected to read "(iii) Paragraphs (a)(1)(i), (a)(1)(ii) introductory text, (a)(1)(ii)(A),". On the last two lines of the paragraph, the language "(a)(1)(ii) introductory text, and (a)(1)(ii)(A) and (B)." is corrected to read "(a)(1)(ii) introductory text, (a)(1)(ii)(A) and (a)(1)(ii)(B).".

§ 301.6109–1T [Corrected]

2. On page 62520, column 3, § 301.6109–1T(h), the last three lines of the paragraph, the language "further guidance prior to November 24, 1997, see § 301.6109–1(a)(1)(i), (a)(1)(ii)(A) and (a)(1)(ii)(B)." is corrected to read "guidance applicable prior to November 25, 1997, see § 301.6109–1(a)(1)(i), (a)(1)(ii) introductory text, (a)(1)(ii)(A) and (a)(1)(ii)(B).".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 98–6927 Filed 3–17–98; 8:45 am]

BILLING CODE 4830–01–U

POSTAL SERVICE

39 CFR Part 20

Implementation of New Market Opportunities Program

AGENCY: Postal Service.

ACTION: Interim rule.

SUMMARY: The Postal Service proposes to adopt, as an interim rule, new rates and conditions of mailing for the New Market Opportunities Program. This program is designed to meet the needs of direct mail and mail order companies seeking to easily and cost effectively enter the international marketplace. It is available for companies who wish to test sending catalogs and merchandise to any or all of the following markets: Brazil, Canada, Chile, China, France, Germany, Hong Kong, Japan, Mexico, Singapore, and the United Kingdom. A mailer will send catalogs using International Surface Air Lift or VALUEPOST™/CANADA service and merchandise using Global Package Link. To assist the mailers' tests in these markets, the Postal Service includes other services as part of the program, including translation of order form and

company information sheet into in-country language, and advice on catalog layout, as well as mailing list companies, call centers, and other resources in the destination countries.

DATES: These regulations take effect March 18, 1998.

ADDRESSES: Written comments should be directed to Manager, Mail Order, Room 370–IBU, International Business Unit, U.S. Postal Service, Washington, D.C. 20260–6500. Copies of all written comments will be available for public inspection between 9 a.m. and 4 p.m., Monday through Friday, in the International Business Unit, 10th Floor, 901 D Street, SW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Robert E. Michelson, (202) 268–5731.

SUPPLEMENTARY INFORMATION: The New Market Opportunities Program provides bulk mailing services designed to assist direct mailers, catalogers, and other mailers in entering new international markets. This program ties together International Surface Air Lift (ISAL), VALUEPOST™/CANADA, and Global Package Link (GPL) to Brazil, Canada, Chile, China, Hong Kong, France, Germany, Japan, Mexico, Singapore, and the United Kingdom with other services so that mailers may conduct market tests.

The New Market Opportunities Program is adopted as an interim rule in response to the requests of numerous mailers for an easy way to test whether their merchandise is marketable in the markets where the program is available. The Postal Service believes that this program will make it possible for companies to conduct such a test, with minimal risk and investment, and will cover the cost of providing the service with a reasonable contribution to institutional costs.

To qualify for this program, a direct mailer, cataloger, or other mailer must use ISAL or VALUEPOST™/CANADA service to send a minimum of 25,000 catalogs to one of the test markets and use Global Package Link service to ship orders received. Each test will last up to 6 months, and more than one country may be tested simultaneously.

Companies that participate in the New Market Opportunities Program will receive information to determine their best country-specific prospects, delivery of their catalogs in the selected test market(s), delivery of their packages, and evaluation of test results at the end of the test.

The New Market Opportunities Program is available to Brazil, Canada, Chile, China, France, Germany, Hong Kong, Japan, Mexico, Singapore, and the United Kingdom.

Rates for this program include delivery of catalogs; translation of the company's order form and company information to the in-country language of the test market; lists of suppliers for mailing lists, call centers, payment processing companies; country-specific information; lettershop services for mailers that have not used ISAL or VALUEPOST™/CANADA for at least 1 year, a cost analysis worksheet; post-test evaluation of results; and participation in a post-test visit to USPS-selected destination countries. Rates are one fixed price for all markets for 25,000 catalogs and a per-piece charge for more than 25,000. Maximum weight allowable for each catalog is 6 ounces.

Although exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites public comment at the above address.

The Postal Service adopts as an interim rule International Mail Manual (IMM) 248 , which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 20.1).

List of Subjects in 39 CFR Part 20

Foreign relations, Incorporation by reference, International postal services.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 407, 408.

2. The IMM is amended to incorporate part 248, New Market Opportunities Program, as follows:

International Mail Manual (IMM)

2 Conditions for Mailing * * *

* * * * *

248 New Market Opportunities Program

248.1 Definition

The New Market Opportunities Program is designed for catalog companies that desire to test sending catalogs and merchandise to foreign countries. Each test will last up to 6 months. More than one market may be tested simultaneously. To participate in the New Market Opportunities Program, a company must sign a service agreement. This will contain the mailer's agreement to use International Surface Air Lift (ISAL) or VALUEPOST™/CANADA service to send its catalogs and Global Package Link (GPL) service to fulfill catalog orders to selected destination markets. The mailer must meet all qualifications of GPL, either directly or through a GPL wholesaler (see 620 and 630). In addition to the delivery of catalogs and merchandise, the Postal Service will provide the mailer with:

.11. A translation of the company's order form and ordering instructions to the language of the destination country, if appropriate.

.12. A translation of a single page in the mailer's catalog, which describes the company and the products it sells, to the language of the destination country, if appropriate.

.13. A list of suppliers including list providers, call centers, and payment processing companies for the destination countries.

.14. A description of the destination country culture and mail order environment, including, but not limited to, country demographics, potential mail order products, direct marketing infrastructure, payment options, and catalog configuration.

.15. Lettershop service through the USPS Prequalified Wholesaler Program, if the mailer has not used ISAL or VALUEPOST™/CANADA for 1 year or more.

.16. A cost analysis worksheet to assist the mailer in making a cost analysis and projections for each market test.

.17. Participation in a post-test visit to Postal Service-selected destination countries.

248.2 Qualifying Mailings

Only printed matter as defined in 241 that meets all applicable mailing standards may be sent through this program. To qualify, a mailing must consist of a minimum of 25,000 ISAL or VALUEPOST™/CANADA pieces to each country tested.

248.3 Availability

The New Market Opportunities Program is available to the following markets: Brazil, Canada, Chile, China, France, Germany, Hong Kong, Japan, Mexico, Singapore, and the United Kingdom. The service is available as a Direct Ship or Drop Ship acceptance under 246.712 and 246.32 for ISAL and 247 for VALUEPOST™/CANADA.

248.4 Special Services

The special services described in chapter 3 are not available for items sent as part of the New Market Opportunities Program as ISAL or VALUEPOST™/CANADA.

248.5 Customs Documentation

See the customs forms requirements in 244.6 for ISAL and in 247.42 for VALUEPOST™/CANADA.

248.6 Permits

ISAL and VALUEPOST™/CANADA mailings must be submitted to the Postal Service with PS Form 3651, International Statement of Mailing (for Permit Imprints and Metered Bulk Letters to Canada).

248.7 Postage

248.71 Rates

Rates for the first 25,000 pieces per country:
Price per country: $22,000
Price for Canada: $17,000
Discount per country $ 2,000
(3 or more countries in a 6-month period)

Additional catalogs over 25,000 pieces: Add $0.80 per piece.

Note: Cost for GPL shipments is additional (see 620).

248.72 Payment Methods

Payment must be paid through advance deposit account by permit imprint only. Mailings must consist of identical weight pieces.

248.8 Weight and Size Limits

The maximum weight per piece is 6 ounces.

248.9 Preparation Requirements

All of the requirements for preparation of ISAL and VALUEPOST™/CANADA in 246 and 247 must be met.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–6943 Filed 3–17–98; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300622; FRL–5773–1]

RIN 2070–AB78

Tebufenozide; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the insecticide tebufenozide and its metabolites in or on non-brassica leafy vegetables (Crop Group 4) at 5.0 part per million (ppm), brassica (cole) leafy vegetables (Crop Group 5) at 5.0 ppm, and turnip tops at 5.0 ppm for an additional 1-year period, to February 28, 1999. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on leafy vegetables, brassica leafy vegetables, and turnip tops. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective March 18, 1998. Objections and requests for hearings must be received by EPA, on or before May 18, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP-300622], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300622], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 278, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-9367; e-mail: ertman.andrew@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of March 5, 1997 (62 FR 9984) (FRL–5591–7), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of tebufenozide and its metabolites in or on non-brassica leafy vegetables (Crop Group 4) at 5.0 ppm, brassica (cole) leafy vegetables (Crop Group 5) at 5.0 ppm, and turnip tops at 5.0 ppm, with an expiration date of February 28, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of tebufenozide on leafy vegetables, brassica leafy vegetables, and turnip tops for this year growing season because there are no viable alternative products due to the beet armyworm's (BAW) and diamondback moth's proclivity for developing resistance to all classes of insecticides. It was asserted that the last five years have seen a marked increase in the amounts of active ingredient necessary to achieve control of the BAW in vegetables, and during 1995 many growers reported failures with all products and combinations. This increase of pesticide use has lead to the pest developing a high tolerance to these chemicals. This tolerance has in turn allowed the pest to develop high populations which cause economic damage to the various cole and leafy vegetable crops. These pests tend to do the most damage to the crowns or growing points of young plants. Other damage is to the harvestable heads, in which they contaminate and lower the quality of the produce. The applicant contends that without new chemistry to combat these pests, growers will continue to suffer significant economic losses. After having reviewed the submission, EPA concurs that emergency conditions exist for this state. EPA has authorized under FIFRA section 18 the use of tebufenozide on leafy vegetables, brassica lelafy vegetables, and turnip tops for control of the beet armyworm and diamondback moth in California and the beet armyworm in Texas.

EPA assessed the potential risks presented by residues of tebufenozide in or on leafy vegetables, brassica leafy vegetables, and turnip tops. In doing so, EPA considered the new safety standard

in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of March 5, 1997 (62 FR 9984). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1-year period. Although this tolerance will expire and is revoked on February 28, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on leafy vegetables, brassica leafy vegetables, and turnip tops after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

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

Any person may, by May 18, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

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

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

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300622]. No CBI should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

III. Regulatory Assessment Requirements

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

Since this extension of an existing time-limited tolerance does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

IV. 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 180

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

Dated: February 26, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.482 [Amended]

2. In § 180.482, by amending paragraph (b) in the table, for the commodities "Leafy vegetable (Colebrassica)," "Leafy vegetables (non-brassica)," and "Turnip tops" by removing "2/28/98" and by adding in its place "2/28/99".

[FR Doc. 98–6387 Filed 3–17–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPPTS–300601; FRL–5764–7]

RIN 2070–AB78

Fludioxonil Pesticide Tolerance; Deletion of Duplicate Tolerance, Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a technical amendment to the tolerance regulations for Fludioxonil issued under section 408(e) and (l)(6) of the Food, Drug and Cosmetic Act.

DATES: This technical amendment is effective March 18, 1998.

FOR FURTHER INFORMATION CONTACT: By mail: Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC. Office location, telephone number and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA (703) 308–9354, e-mail: waller.mary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 1, 1997 (61 FR 41286; FRL–5732–5), EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e) and (l)(6), established a time-limited tolerance for residues of fludioxonil on potatoes at 0.02 parts per million (40 CFR 180.512). Subsequently, on October 29, 1997, EPA issued a rule establishing a permanent tolerance for fludioxonil on potatoes in reponse to a petition submitted by Ciba-Geigy requesting the tolerance (40 CFR 180.516). Through oversight, tolerances have been established for residues of fludioxonil on potatoes in two different sections of 40 CFR part 180. Tolerances for fludioxonil now appear in both §§ 180.512 and 180.516. In addition, the tolerance level is exactly the same in both sections. Since § 180.512 is time-limited and expires on August 1, 1998, and since that tolerance was established on the Agencies initiative, EPA is removing § 180.512. Also, EPA is revising the section title for § 180.516 and paragraph (a) to add the common name of the funigicide.

I. Regulatory Assessment Requirement

This is a technical amendment to a final tolerance regulation issued under FFDCA section 408(d) in response to a petition submitted to the Agency. 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 technical amendment does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). In addition, since this type of action does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) do not apply.

II. Submission to Congress and the General Accounting Office

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

List of Subjects in 40 CFR Part 180

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

Dated: February 26, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.512 [Removed]

2. By removing § 180.512.

§ 180.516 [Amended]

3. In § 180.516 by revising the section title and paragraph (a) to read as follows:

§ 180.516 Fludioxonil; tolerances for residues.

(a) *General.* A tolerance is established for residue of the fungicide fludioxonil, [4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile], in or one the following food commodities:

Commodity	Parts per million
Potatoes	0.02

* * * * *

[FR Doc. 98–6386 Filed 3–17–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300616; FRL–5770–9]

RIN 2070–AB78

Clomazone; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the herbicide clomazone in or on watermelons at 0.1 part per million (ppm) for an additional 1-year period, to May 30, 1999. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on watermelons. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective March 18, 1998. Objections and requests for hearings must be received by EPA, on or before May 18, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300616], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300616], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Virginia Dietrich, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 272, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–308–9359; e-mail: dietrich.virginia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of May 2, 1997 (62 FR 24040–24045) (FRL–5713–6), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of clomazone and its metabolites in or on watermelons at 2 ppm, with an expiration date of May 30, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of clomazone on watermelons for this year growing season because no herbicides with efficacy similar to clomazone are currently registered for use and that without clomazone, significant economic loss will likely result. After having reviewed the submission, EPA concurs that emergency conditions exist for this state. EPA has authorized under FIFRA section 18 the use of clomazone on watermelons for control of weeds in watermelons.

EPA assessed the potential risks presented by residues of clomazone in or on watermelons. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of May 2, 1997 (62 FR 24040-24045). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1-year period. Although this tolerance will expire and is revoked on May 30, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on watermelons after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

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

Any person may, by May 18, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility

that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

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

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 51/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300616]. No CBI should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

III. Regulatory Assessment Requirements

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

Since this extension of an existing time-limited tolerance does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

IV. 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 180

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

Dated: March 3, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.425 [Amended]

2. In § 180.425, by amending paragraph (b) in the table, for the commodity "watermelons" by removing the date "May 30, 1998" and by adding in its place "5/30/99."

[FR Doc. 98–6385 Filed 3–17–98; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 5040

[WO–130–1820–0024 1A]

RIN 1004–AC93

Sustained-Yield Forest Units

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: BLM is revising the regulations on sustained yield forest units to remove obsolete or unnecessary sections and update the remaining regulations that are still necessary for the administration of the revested Oregon and California Railroad and the reconveyed Coos Bay Wagon Road grant lands in Oregon (referred to in this rule as O. and C. lands).

EFFECTIVE DATE: April 17, 1998.

ADDRESSES: You may send inquiries or suggestions to: Director (630), Bureau of Land Management, 1849 C Street, N.W., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Lyndon Werner, telephone: 503–952–6071; or Erica Petacchi, telephone: 202–452–5084.

SUPPLEMENTARY INFORMATION:

I. Background

The final rule published today is a stage of a rulemaking process that revises the regulations in 43 CFR part 5040. This rule was preceded by a proposed rule published on November 15, 1996 in the **Federal Register** at 61 FR 58501. The proposed rule provided for a comment period of 60 days, and BLM received no public comments.

The final rule is part of BLM's initiative to streamline its regulations in the Code of Federal Regulations (CFR). BLM is removing unnecessary or obsolete regulations, and making the remainder of the regulations more understandable and relevant. BLM has determined that the existing regulations on master units and cooperative sustained-yield units are obsolete and will be removed from the CFR. The regulations on establishing sustained-yield forest units are still necessary, and BLM is rewriting this section to remove references to master units and cooperative sustained-yield units. The section on exchanges is still relevant, but is merely a restatement of the statutory language, and will be removed.

II. Final Rule as Adopted

The final rule removes obsolete requirements from the CFR and duplicative provisions that can be found in the underlying statutes. This rule will allow BLM to dissolve the existing master units and establish more appropriately configured sustained-yield forest units.

Subpart 5040—Sustained-Yield Unit and Cooperative Agreements

This subpart is removed in its entirety. These regulations merely restate the language in the Act of August 28, 1937 (50 Stat. 874, 43 U.S.C. 1181) ("the Act").

Subpart 5041—Annual Productive Capacity

This subpart is rewritten for clarity but not changed in any substantial way. BLM will continue to declare the annual productive capacity of the O. and C. lands under the principle of sustained-yield.

Subpart 5042—Master Units

This subpart is removed in its entirety. For the reasons presented in the Background section of the proposed rule (61 FR 58501–58504, November 15, 1996), BLM does not need to designate master units as an interim step to designating sustained-yield forest units and cooperative agreements. The currently designated master units will remain in effect until the final rule is effective and BLM completes the process for the designation of sustained-yield forest units.

Subpart 5043—Sustained-Yield Forest Units

This subpart is revised to improve clarity and consistency with the removal of subpart 5042—Master Units. The revision has no effect on BLM's customers because it does not diminish the level of public involvement in BLM's determination of sustained-yield forest units.

Subpart 5044—Cooperative Sustained-Yield Agreements

This subpart is removed in its entirety. There are currently no cooperative sustained-yield agreements or any apparent interest in their designation. If this changes, the O. and C. Lands Act provides for their designation and regulations governing their designation can again be published.

Subpart 5045—Exchanges

This subpart is removed in its entirety. This removal has no effect on BLM's operations, because BLM will still have the authority to exchange O. and C. lands under the Act of July 31, 1939.

The remaining sections of part 5040 are rewritten and renumbered in a new part 5040.

III. Responses to Comments

BLM received no comments from the public. In developing this final rule, however, BLM identified several issues that needed minor clarifications:

1. Section 5040.5(a) needs clarifying language to explain that until BLM follows the process of designating Sustained Yield Units, the Master Units remain in effect and section 5040.5(a) does not apply.

2. In the proposed rule, BLM referred to the lands affected by the regulations in two different ways: "the lands it manages in western Oregon" and "the O. and C. lands." Reviewers suggested that BLM should be consistent by referring to the lands affected as "the O. and C. lands."

In the final rule, we have corrected these minor inconsistencies, by:

1. Adding the following statement to section 5040.4: "Until new sustained-yield forest units are designated for the first time in accordance with 43 CFR 5040, the current master unit designations will continue to be in effect'; and

2. Adding the following to section 5040.1, after the first sentence: "These lands are hereafter referred to as "the O. and C. lands.'"

IV. Procedural Matters

National Environmental Policy Act

BLM has prepared an environmental assessment (EA) and has found that the rule would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified previously. BLM invites the public to review these documents by contacting us at the addresses listed above (see **ADDRESSES**).

Paperwork Reduction Act

This rule contains no information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

Congress enacted The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This rule will not have a significant economic impact on a substantial number of small entities. The rule provides for a new process by which BLM may establish sustained-yield forest units. Before BLM can establish units, we must hold public hearings in the areas affected by the proposed units. This gives any potentially affected small entity the chance to provide input to BLM that could influence the outcome of the proposals. In addition, the O. and C. Lands Act provides that when BLM establishes sustained-yield forest units, the units must provide a permanent source of raw materials to support local communities and industries, giving due consideration to established forest products operations. For these reasons, BLM has determined that there is no need to prepare a regulatory flexibility analysis.

Unfunded Mandates Reform Act

Revision of 43 CFR part 5040 will not result in any unfunded mandate to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

Executive Order 12612

The final rule 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, in accordance with Executive Order 12612, BLM has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12630

The final rule does not represent a government action capable of interfering with constitutionally protected property rights. The final rule will allow BLM to establish new sustained-yield forest units, and will remove several obsolete provisions in the part 5040 regulations, but there will be no private property rights impaired as a result. Therefore, BLM has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 12866

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the final rule is not a significant regulatory action. As such, the final rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

Executive Order 12988

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

Author

The principal author of this rule is Lyndon Werner, Oregon State Office, Bureau of Land Management, 1849 C Street NW., Room 401LS, Washington DC 20240; Telephone: 202–452–5042 (Commercial or FTS).

List of Subjects for 43 CFR Part 5040

Forests and forest products, Public lands.

Dated: February 18, 1998.

Sylvia V. Baca,

Deputy Assistant Secretary, Land and Minerals Management.

For the reasons stated above, and under the authority of 43 U.S.C. 1740, subchapter B, BLM is revising Part 5040, Group 5000, Subchapter E, Chapter II of Title 43 of the Code of Federal Regulations to read as follows:

PART 5040—SUSTAINED-YIELD FOREST UNITS

Sec.

Authority: 43 U.S.C. 1181e; 43 U.S.C. 1740.

§ 5040.1 Under what authority does BLM establish sustained-yield forest units?

BLM is authorized, under the O. and C. Lands Act (43 U.S.C. 1181a *et seq.*) and the Federal Land Policy and Management Act, to divide the lands it manages in western Oregon into sustained-yield forest units. These lands are hereafter referred to as "the O. and C. lands." BLM establishes units that contain enough forest land to provide, insofar as practicable, a permanent source of raw materials to support local communities and industries, giving due consideration to established forest products operations.

§ 5040.2 What will BLM do before it establishes sustained-yield forest units?

Before BLM designates sustained-yield forest units, it will:

(a) Hold a public hearing in the area where it proposes to designate the units. BLM will provide notice, approved by the BLM Director, to the public of any hearing concerning sustained-yield forest units. This notice must be published once a week for four consecutive weeks in a newspaper of general circulation in the county or counties in which the forest units are situated. BLM may also publish the notice in a trade publication; and

(b) Forward the minutes or meeting records to the BLM Director, along with an appropriate recommendation concerning the establishment of the units.

§ 5040.3 How does BLM establish sustained-yield forest units?

After a public hearing, BLM will publish a notice in a newspaper of general circulation in the county or counties affected by the proposed units, stating whether or not the BLM Director has decided to establish the units. If the BLM Director determines that the units should be established, BLM will include in its notice information on the geographical description of the sustained-yield forest units, how the public may review the BLM document that will establish the units, and the date the units will become effective. BLM will publish the notice before the units are established.

§ 5040.4 What is the effect of designating sustained-yield units?

Designating new sustained-yield forest units abolishes previous O. and C. master unit or sustained-yield forest unit designations. Until new sustained-yield forest units are designated for the first time in accordance with 43 CFR part 5040, the current master unit designations will continue to be in effect.

§ 5040.5 How does BLM determine and declare the annual productive capacity?

(a) If BLM has not established sustained-yield forest units under part 5040, then BLM will determine and declare the annual productive capacity by applying the sustained-yield principle to the O. and C. lands, treating them as a single unit.

(b) If BLM has established sustained-yield forest units under part 5040, then BLM will determine and declare the annual productive capacity by applying the sustained-yield principle to each separate forest unit.

(c) If it occurs that BLM has established sustained-yield forest units for less than all of the O. and C. lands, then BLM will determine and declare the annual productive capacity as follows:

(1) BLM will treat sustained-yield forest units as in paragraph (b) of this section; and

(2) BLM will treat any O. and C. lands not located within sustained-yield forest units as a single unit.

[FR Doc. 98–6896 Filed 3–17–98; 8:45 am]
BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket No. 96–187; FCC 97–23]

Implementation of Section 402(b)(1)(a) of the Telecommunications Act of 1996 (Tariff Streamlining Provisions for Local Exchange Carriers)

CFR Correction

In title 47 of the Code of Federal Regulations, parts 40 to 69, revised as of October 1, 1997, on pages 131 and 132, paragraphs (e), (1), and (2) should be redesignated to paragraphs (f), (1), and (2), and paragraph (e) redesignated from paragraph (d) at 62 FR 5778, Feb. 7, 1997, should be reinstated to read as follows:

§ 61.58 [Corrected]

* * * * *

(e) *Other carriers.* (1) Tariff filings in the instances specified in paragraphs (d)(1) (i), (ii), and (iii) of this section must be made on at least 15 days' notice.

(i) Tariffs filed in the first instance by new carriers.

(ii) Tariffs filings involving new rates and regulations not previously filed at, from, to or via points on new lines; at, from to or via new radio facilities; or for new points of radio communication.

(iii) Tariff filings involving a change in the name of a carrier, a change in Vertical and Horizontal coordinates (or other means used to determine airline mileages), a change in the lists of mileages, a change in the lists of connecting, concurring or other participating carriers, text changes, or the imposition of termination charges calculated from effective tariff provisions. The imposition of termination charges does not include the initial filing of termination liability provisions.

(2) Tariff filings involving a change in rate structure, a new service offering, or a rate increase must be made on at least 45 days' notice.

(3) All tariff filings not specifically assigned a different period of public notice in this part must be made on at least 35 days' notice.

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BILLING CODE 1505–01–D

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1816 and 1852

FAR Supplement Coverage of Award Fee Evaluations

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule amending the NASA FAR Supplement (NFS) coverage on award fee evaluations to correct inaccurate references and improve clarity.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, NASA Office of Procurement, Contract Management Division (Code HK), (202) 358–0478.

SUPPLEMENTARY INFORMATION:

Background

NASA has different award fee evaluation procedures for service and end item contracts. For service contracts, all award fee evaluations during the contract term are final. For end item contracts, evaluations during the contract term are "interim" evaluations that are superseded by a single final evaluation at contract completion. The NFS has inaccurate references associating interim evaluations with service contracts, and these are deleted by this rule. In addition, NASA allow for provisional payment of award fee, i.e., payments made during award fee periods in anticipation of the Government evaluation at the end of the period. References to provisional payments in the NFS are inconsistent, and this rule conforms these references. Finally, to improve its clarity, the NFS coverage is restructured and miscellaneous editorial changes are made. None of the NFS revisions in this rule change NASA policy.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1816 and 1852

Government procurement.

Deidre Lee,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1816 and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1816 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1)

PART 1816–TYPES OF CONTRACTS

2. In section 1816.405–271, paragraph (a) is revised to read as follows:

1816.405–271 Base fee.

(a) A base fee shall not be used on CPAF contracts for which the periodic award fee evaluations are final (1816.405–273(a)). In these circumstances, contractor performance during any award fee period is independent of and has no effect on subsequent performance periods or the final results at contract completion. For other contracts, such as those for hardware or software development, the procurement officer may authorize the use of a base fee not to exceed 3 percent. Base fee shall not be used when an award fee incentive is used in conjunction with another contract type (e.g., CPIF/AF).

* * * * *

3. In paragraph (a) of section 1816.405–272, the first sentence is revised to read as follows:

1816.405–272 Award fee evaluation periods.

(a) Award fee evaluation periods, including those for interim evaluations, should be at least 6 months in length.

* * *

* * * * *

4. Section 1816.405–273 is revised to read as follows:

1816.405–273 Award fee evaluations.

(a) *Service contracts.* On contracts where the contract deliverable is the performance of a service over any given time period, contractor performance is often definitively measurable within each evaluation period. In these cases, all evaluations are final, and the contractor keeps the fee earned in any period regardless of the evaluations of subsequent periods. Unearned award fee in any given period in a service contract is lost and shall not be carried forward, or "rolled-over," into subsequent periods.

(b) *End item contracts.* On contracts, such as those for end item deliverables, where the true quality of contractor performance cannot be measured until the end of the contract, only the last evaluation is final. At that point, the total contract award fee pool is available, and the contractor's total performance is evaluated against the award fee plan to determine total earned award fee. In addition to the final evaluation, interim evaluations are done to monitor performance prior to contract completion, provide feedback to the contractor on the Government's assessment of the quality of its performance, and establish the basis for making interim award fee payments (see 1816.405–276(a)). These interim evaluations and associated interim award fee payments are superseded by the fee determination made in the final evaluation at contract completion. The Government will then pay the contractor, or the contractor will refund to the Government, the difference between the final award fee determination and the cumulative interim fee payments.

(c) *Control of evaluations.* Interim and final evaluations may be used to provide past performance information during the source selection process in future acquisitions and should be marked and controlled as "Source Selection Information—See FAR 3.104".

5. In section 1816.405–275, paragraph (b)(2) is revised to read as follows:

1816.405–275 Award fee evaluation scoring.

* * * * *

(b) * * *

(2) *Very good* (90–81): Very effective performance, fully responsive to contract requirements; contract requirements accomplished in a timely, efficient, and economical manner for the most part; only minor deficiencies.

* * * * *

6. Section 1816.405–276 is added to read as follows:

1816.405–276 Award fee payments and limitations.

(a) *Interim award fee payments.* The amount of an interim award fee payment (see 1816.405–273(b)) is limited to the lesser of the interim evaluation score or 80 percent of the fee allocated to that interim period less any provisional payments (see paragraph (b) of this subsection) made during the period.

(b) *Provisional award fee payments.* Provisional award fee payments are payments made within evaluation periods prior to an interim or final evaluation for that period. Provisional payments may be included in the contract and should be negotiated on a case-by-case basis. For a service contract, the total amount of award fee available in an evaluation period that may be provisionally paid is the lesser of a percentage stipulated in the contract (but not exceeding 80 percent) or the prior period's evaluation score. For an end item contract, the total amount of provisional payments in a period is limited to a percentage not to exceed 80 percent of the prior interim period's evaluation score.

(c) *Fee payment.* The Fee Determination Official's rating for both interim and final evaluations will be provided to the contractor within 45 calendar days of the end of the period being evaluated. Any fee, interim or final, due the contractor will be paid no later than 60 calendar days after the end of the period being evaluated.

1816.406–70 [Amended]

7. In paragraph (a) of section 1816.406–70, the last sentence is removed.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. In section 1852.216–76, the clause date is revised, the designated paragraph (f) is redesignated as paragraph (g) and republished, a new paragraph (f) is added, and Alternate I to the clause is removed, to read as follows:

1852.216–76 Award fee for service contracts.

As prescribed in 1816.406–70(a), insert the following clause:

Award Fee for Service Contracts

March 1998

* * * * *

(f)(1)Provisional award fee payments [*insert "will" or "will not", as applicable*] be made under this contract pending the determination of the amount of fee earned for an evaluation period. If applicable, provisional award fee payments will be made to the Contractor on a [*insert the frequency of provisional payments (not more often than monthly)*] basis. The total amount of award fee available in an evaluation period that will be provisionally paid is the lesser of [Insert a percent not to exceed 80 percent] or the prior period's evaluation score.

(2) Provisional award fee payments will be superseded by the final award fee evaluation for that period. If provisional payments exceed the final evaluation score, the Contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the Contracting Officer.

(3) If the Contracting Officer determines that the Contractor will not achieve a level of performance commensurate with the provisional rate, payment of provisional award fee will be discontinued or reduced in such amounts as the Contracting Officer deems appropriate. The Contracting Officer will notify the Contractor in writing if it is determined that such discontinuance or reduction is appropriate. This determination is not subject to the Disputes clause.

(4) Provisional award fee payments [*insert "will" or "will not", as appropriate*] be made prior to the first award fee determination by the Government.

(g) Award fee determinations made by the Government under this contract are not subject to the Disputes clause.

*[A period of time greater or lesser than 6 months may be substituted in accordance with 1816.405–272(a).]

(End of clause)

[FR Doc. 98–7033 Filed 3–17–98; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB73

Endangered and Threatened Wildlife and Plants; Endangered Status for the Peninsular Ranges Population Segment of the Desert Bighorn Sheep in Southern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the distinct vertebrate population segment of bighorn sheep (*Ovis canadensis*) (Peninsular bighorn sheep) occupying the Peninsular Ranges of southern California, to be an endangered species pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended (Act). The Service originally proposed to list the Peninsular bighorn sheep throughout its range, which extends into Baja California, Mexico. However, because new information received during the comment periods indicated listing bighorn sheep populations in Baja California is not warranted, the final listing determination includes only the Peninsular bighorn sheep population segment in the United States. The synergistic effects of disease; low recruitment; habitat loss, degradation, and fragmentation; non-adaptive behavioral responses associated with residential and commercial development; and high predation rates coinciding with low bighorn sheep population numbers threaten the continued existence of these animals in southern California. This rule implements Federal protection and recovery provisions of the Act for the Peninsular bighorn sheep. Critical habitat is not being designated.

DATES: This rule is effective March 18, 1998.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008.

FOR FURTHER INFORMATION CONTACT: Arthur Davenport, at the above address (telephone: 760/431–9440).

Background

The bighorn sheep (*Ovis canadensis*) is a large mammal (family Bovidae) originally described by Shaw in 1804

(Wilson and Reeder 1993). Several subspecies of bighorn sheep have been recognized on the basis of geography and differences in skull measurements (Cowan 1940, Buechner 1960). These subspecies of bighorn sheep, as described in this early work, include *O. c. cremnobates* (Peninsular bighorn sheep), *O. c. nelsoni* (Nelson bighorn sheep), *O. c. mexicana* (Mexican bighorn sheep), *O. c. weemsi* (Weems bighorn sheep), *O. c. californiana* (California bighorn sheep), and *O. c. canadensis* (Rocky Mountain bighorn sheep). However, as discussed later, recent genetic studies question the validity of some of these subspecies and reveal the need to reevaluate bighorn sheep taxonomy. Regardless of the taxonomy, Peninsular bighorn sheep in southern California meet the Service's criteria for consideration as a distinct vertebrate population segment and are treated as such in this final rule.

Bighorn sheep (*Ovis canadensis*) are found along the Peninsular Mountain Ranges from the San Jacinto Mountains of southern California south into the Volcan Tres Virgenes Mountains near Santa Rosalia, Baja California, Mexico, a total distance of approximately 800 kilometers (km) (500 miles (mi)). The area occupied by the distinct vertebrate population segment covered in this final rule coincides with the range of the currently questioned subspecies *O. c. cremnobates* in California. The California Fish and Game Commission listed *O. c. cremnobates* as "rare" in 1971. The designation was changed to "threatened" by the California Department of Fish and Game (CDFG) to conform with terminology of the amended California Endangered Species Act (CESA).

The Peninsular bighorn sheep is similar in appearance to other desert associated bighorn sheep. The species' pelage (coat) is pale brown, and its permanent horns, which become rough and scarred with age, vary in color from yellowish-brown to dark brown. The horns are massive and coiled in males; in females, they are smaller and not coiled. In comparison to other desert bighorn sheep, the Peninsular bighorn sheep is generally described as having paler coloration and larger and heavier horns that are moderately divergent at the base (Cowan 1940).

The habitat still remaining for the Peninsular bighorn sheep in the United States is managed by the California Department of Parks and Recreation (CDPR) (46 percent), Bureau of Land Management (BLM) (27 percent), private landowners (24 percent), Bureau of Indian Affairs (1 percent), U.S. Forest Service (USFS) (1 percent), and other State agencies (1 percent) (BLM 1993).

The Peninsular bighorn sheep occurs on open slopes in hot and dry desert regions where the land is rough, rocky, sparsely vegetated and characterized by steep slopes, canyons, and washes. Most of these sheep live between 91 and 1,219 meters (m) (300 and 4,000 feet (ft)) in elevation where average annual precipitation is less than 10 centimeters (cm) (4 inches (in)) and daily high temperatures average 104° Fahrenheit in the summer. Caves and other forms of shelter (e.g., rock outcrops) are used during inclement weather. Lambing areas are associated with ridge benches or canyon rims adjacent to steep slopes or escarpments. Alluvial fan areas are also used for breeding and feeding activities.

From May through October, bighorn sheep are dependent on permanent sources of water and are more localized in distribution. Bighorn sheep populations aggregate during this period due to a combination of breeding activities and diminishing water sources. Summer concentration areas are associated primarily with dependable water sources, and ideally provide a diversity of vegetation to meet the forage requirements of bighorn sheep.

Bighorn sheep species are diurnal. Their daily activity pattern consists of feeding and resting periods that are not synchronous either within or between groups, as some sheep will be resting while others are feeding. Browse is the dominant food of desert-associated bighorn sheep. Plants consumed may include brittlebrush (*Encelia* sp.), mountain mahogony (*Cercocarpus* sp.), Russian thistle (*Salsola* sp.), bursage (*Hyptis* sp.), mesquite (*Proposis* sp.), palo verde (*Cercidium* sp.), and coffeeberry (*Rhamnus* sp.). During the dry season, the pulp and fruits of various cacti are eaten. Native grasses are eaten throughout the year and are important food, especially near waterholes.

Bighorn sheep species produce only one lamb per year. The gestation period is about 5 to 6 months (Geist 1971). Lambing occurs between January and June, with most lambs being born between February and May. Lactating ewes and young lambs congregate near dependable water sources in the summer. Ewes and lambs frequently occupy steep terrain that provides a diversity of slopes and exposures for escape cover and shelter from excessive heat. Lambs are precocial and within a day or so climb as well as the ewes. Lambs are able to eat native grass within 2 weeks of their birth and are weaned between 1 and 7 months of age. By their second spring, bighorn sheep lambs are independent of the ewes and, depending upon physical condition, may attain sexual maturity during the second year of life (Cowan and Geist 1971, Geist 1971).

Distinct Vertebrate Population Segment

Recent analyses of bighorn sheep genetics and morphometrics suggest that the taxonomy of Peninsular bighorn sheep needs to be reevaluated (Ramey 1991, Whehausen and Ramey 1993, Boyce *et al.* 1997). A recent analysis of the taxonomy of bighorn sheep using morphometrics (e.g., size and shape of skull components) failed to support the current taxonomy (Wehausen and Ramey 1993). Ramey (1995) found little genetic variation among desert bighorn sheep using restriction fragment length polymorphism (RFLP) analysis.

By contrast, Boyce *et al.* (1997) found high genetic diversity within and between populations of desert bighorn sheep. In this study, microsatelite loci (MS) and major histocompatibility complex (MHC) were analyzed. It appears that the results of Ramey (1995) and Boyce *et al.* (1997) differ because dissimilar molecular markers were analyzed. That is, the choice of molecular markers (e.g., mtDNA, microsatelites, allozymes) and analytical techniques (RFLP, DNA sequencing, etc.) apparently influence both the discriminating power of the techniques and conclusions relating to the genetic variability of a species.

Ongoing research into the genetic variation of bighorn sheep using a refined technique of mtDNA analysis (i.e., DNA sequencing) has resulted in the discovery of significantly higher genetic variation in mtDNA of the Peninsular bighorn sheep than was found by Ramey (Walter Boyce, DVM, Ph.D. and Esther Rubin, University of California at Davis, *in litt.*, 1997). Boyce and Rubin found several matriarchal lines where Ramey (1995) found only one. The difference in results apparently is a result of the increased resolution provided by the technique used by Boyce and Rubin (Walter Boyce, DVM, Ph.D. and Esther Rubin, University of California at Davis, *in litt.*, 1997). Regardless how the taxonomy issue is finally resolved, the biological evidence supports recognition of Peninsular bighorn sheep as a distinct vertebrate population segment for purposes of listing as defined in the Service's February 7, 1996, Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722).

The definition of "species" in section 3(16) of the Act includes "any distinct

population segment of any species of vertebrate fish or wildlife which interbreeds when mature." For a population to be listed under the Act as a distinct vertebrate population segment, three elements are considered—(1) the discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing (i.e., is the population segment, when treated as if it were a species, endangered or threatened?) (61 FR 4722).

The distinct population segment of bighorn sheep in the Peninsular Ranges is discrete in relation to the remainder of the species as a whole. This population segment is geographically isolated and separate from other desert bighorn sheep. This is supported by an evaluation of the population's genetic variability and metapopulation structure (Boyce *et al.* 1997). The genetic distance found to exist between the Peninsular bighorn sheep and their nearest neighbors at the north end of the range (i.e., bighorn sheep occupying the Orocopia, Eagle, and San Gorgonio mountains) was three times greater than that found within subpopulations of Peninsular bighorn sheep sampled (Boyce *et al.* 1997). Genetic distance is a measure of the degree of genetic difference (divergence) between individuals, populations, or species.

The distinct vertebrate population segment covered in this final rule extends from the northern San Jacinto Mountains to the international border between the United States and Mexico. The range of Peninsular bighorn sheep in Mexico extends southward into the Volcan Tres Virgenes Mountains, located just north of Santa Rosalia, Baja California, Mexico, and is not addressed in this rulemaking. In accordance with distinct vertebrate population segment policy, the Service may determine a population to be discreet at an international border where there are significant differences in (1) the control of exploitation; (2) management of habitat; (3) conservation status, or (4) regulatory mechanisms (61 FR 4722). In the case of the Peninsular bighorn sheep, there are significant differences between the United States and Mexico in regard to the species' conservation status.

Information received from the Mexican Government indicates the population in Baja California is not likely to be in danger of extirpation within the foreseeable future because there are significantly more animals there than occur in the United States (Felipe Ramirez, Mexico Institute of Ecology, *in litt.* 1997). Based on DeForge *et al.* (1993) there are estimated to be between 780 and 1,170 adult Peninsular bighorn sheep in Baja California, Mexico, north of Bahia San Luis Gonzaga. In addition to the higher population numbers, the Mexican Government has initiated a conservation program for bighorn sheep that should improve the status of these animals. Based on information received from the Mexican Government, components of the conservation program include the involvement of the local people in the establishment of conservation and management units that allow some use of the bighorn sheep while promoting its conservation and recovery. Approximately 1,199,175 ha (485,306 ac) have been included in this program for Peninsular bighorn sheep.

Peninsular bighorn sheep are biologically and ecologically significant to the species in that they constitute one of the largest contiguous metapopulations of desert bighorn sheep. The metapopulation spans approximately 160 km (100 mi) of contiguous suitable habitat in the United States. The loss of Peninsular bighorn sheep in the United States would isolate bighorn sheep populations in Mexico, including the Weems subspecies, from all other bighorn sheep, thereby producing a significant gap in the range of bighorn sheep. In addition, the Peninsular bighorn sheep occur in an area that has marked climatic and vegetational differences as compared to most other areas occupied by bighorn sheep. The majority of the range of the Peninsular bighorn sheep is classified as Colorado Desert, a subarea of the Sonoran Desert. This area experiences significantly different climatic variation (e.g., timing and/or intensity of rainfall) than the Mojave or other Sonoran deserts and contains a somewhat different flora (Monson and Sumner 1990, Hickman 1993). Though rainfall is greater in the higher mountains (e.g., San Jacintos), rainfall averages less than 13 mm (5 in) and snow is almost unknown in most of this area (Monson and Sumner 1990). It is important to note that the Peninsular bighorn sheep do not typically occur above 1,200 m (4,000 ft) in the higher mountains (Monson and Sumner 1990). This is unusual because bighorn sheep typically occupy higher elevational habitat that contains sparse vegetative cover. The low amount of rainfall, high evapotranspiration rate, and temperature regime in the majority of the Peninsular bighorn sheep's range is notably different from other North American deserts. The species' ability to exist under these conditions suggests unique behavioral and/or physiological adaptations.

Recent information further supports the significance of the Peninsular bighorn sheep to the overall species. Based on an evaluation of the population's genetic variability by Boyce *et al.* (1997) and Ramey (1995), the Peninsular bighorn sheep contain a large portion of the total genetic diversity of the species. Based on these initial studies, there is at least one distinct haplotype (Ramey 1995) and one unique MS allele (Boyce *et al.* 1997) that are restricted entirely to Peninsular bighorn sheep. High genetic diversity indicates a capacity to adapt to a changing environment.

Status and Distribution

The Peninsular bighorn sheep in the United States declined from an estimated 1,171 individuals in 1971 to about 450–600 individuals in 1991 (CDFG 1991). Recent population estimates indicate continued decline, and Peninsular bighorn sheep in the United States now number approximately 280 (DeForge *et al.* 1995, J. Deforge, *in litt.*, 1997, E. Rubin and W. Boyce, *in litt.*, 1996, W. Boyce and E. Rubin, *in litt.*, 1997). The population of Peninsular bighorn sheep in the United States is currently divided amongst approximately eight ewe groups.

About 20 Peninsular bighorn sheep are held in captivity at the Bighorn Institute in Palm Desert, California. The Bighorn Institute, a private, nonprofit organization, was established in 1982 to initiate a research program for the Peninsular bighorn sheep. The Living Desert, an educational and zoo facility also located in Palm Desert, California, maintains a group of 10 to 12 Peninsular bighorn sheep at its facility.

The continuing decline of the Peninsular bighorn sheep is attributed to a combination of factors, including: (1) the effects of disease (Buechner 1960, DeForge and Scott 1982, DeForge *et al.* 1982, Jessup 1985, Wehausen *et al.* 1987, Elliott *et al.* 1994); (2) low recruitment (DeForge *et al.* 1982, Wehausen *et al.* 1987, DeForge *et al.* 1995); (3) habitat loss, degradation, and fragmentation (J. DeForge, *in litt.*, 1997, David H. Van Cleve, CDPR, *in litt.*, 1997, USFWS, unpub. info., 1997); (4) and, more recently, high rates of predation coinciding with low population numbers (W. Boyce and E. Rubin, *in litt.* 1997).

Previous Federal Action

On September 18, 1985, the Service designated the Peninsular bighorn sheep as a category 2 candidate and solicited status information (50 FR 37958). Category 2 included taxa for which the Service had information indicating that proposing to list as endangered or threatened was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not currently available to support a proposed rule. In the January 6, 1989 (54 FR 554), and November 21, 1991 (56 FR 58804), Notices of Review, the Peninsular bighorn sheep was retained in category 2. In 1990, the Service initiated an internal status review of these animals. This review was completed in the spring of 1991 resulting in a change from category 2 to category 1 designation. Category 1 were those taxa for which the Service had sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened. This change to category 1 was inadvertently omitted from the November 21, 1991, Animal Notice of Review (56 FR 58804).

On July 15, 1991, the Service received a petition from the San Gorgonio Chapter of the Sierra Club to list the Peninsular bighorn sheep as an endangered species. The petition requested that the Service list the Peninsular bighorn sheep throughout its entire range, or, at least, list the population occurring in the Santa Rosa and San Jacinto mountains of southern California, through emergency or normal procedures. The Service used information from the status review and the July 15, 1991, petition to determine that substantial information existed indicating that the Peninsular bighorn sheep may be in danger of extinction throughout all or a significant portion of its range. This finding was made on December 30, 1991, pursuant to section 4(b)(3)(A) of the Act and was published in the **Federal Register** on May 8, 1992, as a proposed rule to list the Peninsular bighorn sheep as endangered (57 FR 19837). The proposed rule constituted the 1-year finding for the July 15, 1991, petitioned action. The proposed listing status was reconfirmed in the November 15, 1994 (59 FR 58982), and February 28, 1996, (61 FR 7596), and September 19, 1997 (62 FR 49398) Notices of Review. On February 14, 1995, the Sierra Club Legal Defense Fund (plaintiff) filed suit in Federal District Court for the Eastern District of California to compel the Secretary of the Interior and the Director of the Service to make a final determination to list the Peninsular bighorn sheep as an endangered or threatened species.

On April 10, 1995, Congress enacted a moratorium prohibiting work on listing actions (Public Law 104–6), thus preventing the Service from taking final listing action on the Peninsular bighorn sheep. The moratorium was lifted on April 26, 1996, by means of a Presidential waiver, at which time limited funding for listing actions was made available through the Omnibus Appropriations Act (Pub. L. No. 104–134, 100 Stat. 1321, 1996). The Service published guidance for restarting the listing program on May 16, 1996 (61 FR 24722).

In response to the Sierra Club Legal Defense Fund suit, the District Court issued a stay order on April 10, 1996. On October 15, 1996, the plaintiff asked the Court to lift the stay and require the final Peninsular bighorn sheep listing decision within 30 days. On November 26, the District Court entered an order denying the plaintiff's request to lift the stay, but certified the issue underlying that denial for interlocutory appeal. The case is currently on interlocutory appeal before the Ninth Circuit Court of Appeals.

Due to new information becoming available during the lapse between the original comment period (November 4, 1992) and lifting of the listing moratorium, the Service reopened the public comment period on April 7, 1997, for 30 days (62 FR 16518). That comment period closed May 7, 1997. Because of additional requests, the Service reopened the public comment period on June 17, 1997, for an additional 15 days (62 FR 32733), and then again on October 27, 1997, for another 15 days (62 FR 55563).

The processing of this final rule conforms with the Service's final listing priority guidance as published in the **Federal Register** on December 5, 1996 (61 FR 64475) and subsequently extended on October 23, 1997 (62 FR 55268). The guidance clarifies the order in which the Service will process rulemakings. The guidance calls for giving highest priority to handling emergency situations (Tier 1), second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings, third priority (Tier 3) to new proposals to add species to the list of threatened and endangered plants and animals and fourth priority (Tier 4) to processing critical habitat determinations and delistings. This final rule constitutes a Tier 2 action. This rule constitutes the final determination resulting from the listing proposal and all comments received during the comment periods.

Summary of Comments and Recommendations

In the May 8, 1992, proposed rule (57 FR 19837) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule for the Peninsular bighorn sheep. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Legal notices were published in the *Riverside Press-Enterprise* and the *San Diego Union-Tribune* on May 26, 1992, and invited general public comment on the proposal. No public hearings were conducted.

In compliance with Service policy on information standards under the Act (59 FR 34270; July 1, 1994), the Service solicited the expert opinions of three appropriate and independent specialists regarding pertinent scientific or commercial data and issues relating to the taxonomy, population models, and supportive biological and ecological information for the Peninsular bighorn sheep. In addition, their opinions were solicited on the discreteness and significance of the Peninsular bighorn sheep. The responses received from two of the reviewers supported the proposed listing action and provided additional insight into the discreteness and significance of the population. All three reviewers commented on the taxonomy of bighorn sheep and the general need for a reevaluation of this group. The third reviewer did not comment on the discreteness or significance of the Peninsular bighorn sheep nor make a recommendation concerning the listing action. Information and suggestions provided by the reviewers were considered in developing this final rule, and incorporated where applicable.

During the initial 6-month comment period the Service received a total of 56 comments, including 14 that were submitted after the comment period closed. (Multiple comments from the same party on the same date were regarded as one comment.) Of these, 40 (71 percent) supported the listing, ten (18 percent) opposed the listing, and six (11 percent) were non-committal. During this initial period, the BLM and the Bighorn Institute took a neutral stance on the proposal. The CDPR, six conservation organizations, four local governments, and 30 other groups or individuals supported listing. The CDFG, the Desert Bighorn Council, and several property owners opposed the listing.

During the three subsequent extensions of the public comment period, the Service received a total of 49 responses (multiple/same issue comments received from a single party were regarded as one comment). Of these, 36 (73 percent) supported the listing, ten (20 percent) opposed the listing, and four (8 percent) were non-committal.

During the first comment period extension, the BLM and the Bighorn Institute recommended listing the Peninsular population as endangered. The CDPR and one conservation organization reaffirmed their support for the listing of the Peninsular bighorn sheep as endangered. On May 6, 1997, MCO Properties, Inc. made an untimely request for public hearing. In lieu of a hearing, the Service extended the public comment period a second time.

Subsequent to the second public comment period extension, the Mexican Government expressed an interest in the potential listing of the Peninsular bighorn sheep. To acquire additional information on the status, distribution, and management of bighorn sheep in Baja California, Mexico, the public comment period was reopened on October 27, 1997 (62 FR 55563). During this third and last comment period extension, the Mexican Government submitted information pertinent to the listing proposal (F. Ramirez, *in litt.* 1997). In particular, the Mexican Government reported on population numbers and the institution of a new conservation program for bighorn sheep. Due in part to the implementation of this conservation program, the southern boundary of the distinct vertebrate population segment was re-delineated at the United States/Mexico International Border.

The Service reviewed all of the written comments referenced above. The comments were grouped and are discussed under the following issues. In addition, all biological and commercial information obtained through the public comment period have been considered and incorporated, as appropriate, into the final rule.

Issue 1: Several commenters contended that the subspecific taxonomy of *Ovis canadensis* was the subject of scientific debate that should be resolved before the Service finalizes this action. At a minimum, the Service should consider a listing of *O. c. cremnobates* rather than a population.

Service Response: The Service concurs that the taxonomy of the Peninsular bighorn sheep is in need of further scientific review. However, the final listing determination for the Peninsular bighorn sheep was based on analysis as a distinct vertebrate population segment. Section 3(16) of the Act defines a species to include "* * * any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." To guide decisions to recognize distinct vertebrate population segments the Service established policy on February 7, 1996 (61 FR 4722). The recognition of Peninsular bighorn sheep as a distinct vertebrate population segment is consistent with this policy and the biological status of this bighorn sheep group warrants such designation. See further discussion of this issue under the Distinct Vertebrate Population Segment section of this rule.

Issue 2: One commenter stated that bighorn sheep in Baja California, Mexico, were distinct from those occurring in southern California, and should therefore not be listed.

Service Response: The southern demarcation for the distinct vertebrate population segment was moved to the United States/Mexico International Border because a discreteness condition regarding a political boundary between two countries was satisfied. However, based on the best available biological information there is no indication that Peninsular bighorn sheep in Baja California, Mexico, are biologically distinct from those in California. The commenter did not provide additional information supporting this statement.

Issue 3: One commenter observed that the proposed rule did not comply with the policy on recognizing distinct vertebrate population segments.

Service Response: The proposed rule was published prior to the publication of the Service's policy on recognizing distinct vertebrate population segments (61 FR 4722). The final rule, in addressing only Peninsular bighorn sheep occurring in southern California, satisfies the policy. A discreteness condition of the policy recognizes the validity of delimiting population segments "by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist." See the section on Distinct Vertebrate Population Segment and its relation to the Peninsular bighorn sheep for further discussion of this issue.

Issue 4: Several commenters expressed concern that data from only a limited portion of the Peninsular Ranges in California (i.e., the Santa Rosa Mountains) was being used to characterize the overall status of the Peninsular bighorn sheep. In addition, the commenters stated that no attempt was made to gather and analyze data for other portions of this population's range (e.g., Mexico, Anza Borrego State Park).

Service Response: The Service has sought and evaluated all available information submitted during the public comment periods or otherwise available to determine this final listing action including information specifically related to Peninsular bighorn sheep populations located in areas other than the Santa Rosa Mountains. Information on threats and impacts to Peninsular bighorn sheep was obtained from those conducting research specific to this population segment. In addition, information on threats affecting bighorn sheep throughout the United States (e.g., see Geist 1971, Krausman and Leopold 1986) also was used as a reference to evaluate potential impacts on Peninsular bighorn sheep.

Although data were not available to plot specific population trends for all portions of the Peninsular bighorn sheep range (such as that in Mexico) (Alvarez 1976, Sanchez *et al.* 1988, Monson 1980, DeForge *et al.* 1993, Lee and Mellink 1996), there is a marked difference in recent and historic population estimates. Based on these estimates, there appears to have been a decline in the number of Peninsular bighorn sheep in Baja California, Mexico. It is not surprising that Peninsular bighorn sheep have declined in Baja California, Mexico, given the presence of the same factors identified for the decline in the United States (e.g., introduced pathogens). Although there is no empirical evidence that active epizootics are occurring at this time, the same diseases that have been implicated in the mortality of Peninsular bighorn sheep in the Santa Rosa Mountains have been detected in Peninsular bighorn sheep within Anza Borrego State Park (Clark *et al.* 1985), and Baja California, Mexico (J. DeForge, pers. comm., 1997). However, recent information provided by the Mexican government (F. Ramirez, *in litt.* 1997), regarding bighorn sheep found on the peninsula of Baja California, Mexico, supports the position that the Mexican population is not likely to be in danger of extirpation within the foreseeable future. Therefore, Peninsular bighorn sheep are not being listed in Mexico at this time.

Issue 5: Several commenters questioned a decline in the population numbers of Peninsular bighorn sheep. In addition, two of the commenters stated the information used in the proposed rule was speculative in nature. Another commenter observed that the population had remained stable over the past 7 years and, therefore, it was premature to list this species.

Service Response: The Service is required to base listing decisions on the best available scientific and commercial information available. Based on this information, the Service concludes that the Peninsular bighorn sheep has undergone a significant decline over much of its range since 1971 and there is a danger of extinction of this distinct population segment. See sections on Status and Distribution and Summary of Factors Affecting the Species for further discussion of this issue.

Issue 6: One commenter claimed that inadequate surveys have been conducted for Peninsular bighorn sheep in Baja California, Mexico.

Service Response: The Service agrees that, even under optimum conditions, it is difficult to detect each individual animal in a population during a survey. However, the survey methodology used by DeForge *et al.* (1993) (i.e., the use of a helicopter) is an accepted reliable method for censusing bighorn sheep populations.

Issue 7: One commenter expressed concern regarding the use of single-year data for sheep recruitment rates. The commenter stated that this use was not statistically valid or indicative of long-term trends and argued that high adult survivorship combined with pulses of good recruitment can counter a year of poor recruitment and allow the bighorn sheep to thrive. The commenter further suggested that data from Anza Borrego Desert State Park did not suggest clear and consistent declines in recruitment.

Service Response: The Service concurs with the general concerns of the commenter regarding the use of single year data versus long-term data in determining population trends. Single-year data were used as an example, in the proposed rule, of the potential effects of introduced disease on Peninsular bighorn sheep. Moreover, the example of low recruitment was also used for purposes of clarification. There is substantial information to support the conclusion that poor recruitment has been one of several factors contributing to the species' decline since at least 1977 (DeForge and Scott 1982, DeForge *et al.* 1982, Wehausen *et al.* 1987, Weaver 1989, Elliott *et al.* 1994, DeForge *et al.* 1995). As for the status of the Peninsular bighorn sheep, the population in the United States has declined from an estimated 1,171 individuals in 1971 to approximately 280 in 1997 (CDFG 1991, E. Rubin and W. Boyce, *in litt.* 1996; W. Boyce and E. Rubin, *in litt.* 1997). The overall precipitous decline is evident from years of data from representative portions of the range of the Peninsular bighorn sheep, (Wehausen *et al.* 1987, Sanchez *et al.* 1988, Weaver 1989, CDFG 1991, DeForge *et al.* 1995, Rubin *et al.* 1997).

Issue 8: One commenter questioned the validity of portions of the Service's analysis under Factor E (natural or manmade threats) in the proposed rule. The commenter additionally stated that the relative importance of population size, recruitment, and inbreeding in influencing the species' status was diminished because the Service did not take the metapopulation structure of the population into consideration. The commenter went on to contend the factors acting on small populations that Berger (1990) investigated were not necessarily limiting the Peninsular bighorn sheep and that his conclusions were speculative in nature. Another commenter questioned the scientific validity of Berger's study, because of issues of scale, and submitted a draft copy of a paper in support of their position.

Service Response: Although the metapopulation structure of the Peninsular bighorn sheep was not specifically mentioned in the proposed rule, the importance of maintaining connectivity within the range was stressed. In this regard, the potential impacts of isolation (e.g., inbreeding) were discussed.

The Service agrees that the factors affecting the populations Berger (1990) studied are not necessarily the same factors affecting the Peninsular bighorn sheep. However, the Service did not state the factors were the same in the proposed rule, but, referenced the conclusion of Berger (1990) that populations containing less than 50 bighorn sheep became extinct within 50 years. Again, the discussion on this issue in the proposed rule focused on the potential problems of isolation. Regardless of the metapopulation structure of Peninsular bighorn sheep, isolation compromises long-term viability. The Service finds no basis to support the statement that Berger's (1990) results were speculative. Berger's (1990) results appear to have been based on observed (reported) population numbers of several populations of bighorn sheep over an extended period of time. The Service concurs that the scale of a study can affect the results and ensuing interpretations. However, the issues facing the Peninsular bighorn sheep include fragmentation of habitat and the isolation of ewe groups. It is well known that small isolated groups are subject to a variety of genetic problems (Lacy 1997).

Issue 9: One commenter recommended the Service address the introduction and spread of disease due to equestrian use in Peninsular bighorn sheep habitat.

Service Response: The Service is unaware of any data that support the notion that disease transmission occurs between horses and bighorn sheep. If such information becomes available, this issue will be taken into consideration during the development and implementation of a recovery plan.

Issue 10: A commenter indicated the Service generally described the habitat of the Peninsular bighorn sheep in the proposed rule but did not specifically mention the habitat conditions that exist in the Santa Rosa Mountains or any other Peninsular Range. Furthermore, without this information, no specific management strategies can be formulated to protect the species.

Service Response: The Service agrees that specific management strategies will have to be based on more detailed ecological data. The CDFG has been sponsoring studies that will generate data needed to determine conservation requirements for the survival and recovery of the Peninsular bighorn sheep. The draft Peninsular Ranges Coordinated Bighorn Sheep Metapopulation Management Plan (BLM *et al.* 1993) describes the Peninsular Ranges' ecosystems and delineates Peninsular bighorn sheep historic, core, lambing, and movement habitat. These data will be used to develop conservation and recovery strategies.

Issue 11: One commenter pointed out that neither burros nor javelina (collared peccary) occur in the California Peninsular Ranges. Therefore, these species could not compete with the Peninsular bighorn sheep for food.

Service Response: The Service concurs. Javelina (collared peccary) and burros were mentioned in the proposed rule in an opening background paragraph describing potential competitors of bighorn sheep. The Service did not intend to suggest that javelina specifically competed with Peninsular bighorn sheep. Although not an issue for Peninsular bighorn sheep in the United States, burros have been documented in bighorn sheep habitat in Baja California, Mexico (DeForge *et al.*, 1993).

Issue 12: One commenter stated that the depleted status of Peninsular bighorn sheep was due more to mountain lion predation, conflicts with autos, and low population numbers than from impacts related to the construction and operation of golf courses.

Service Response: The decline of the Peninsular bighorn sheep is attributable to a number of factors that, in combination, are threatening the survival of this distinct population

segment. See the Summary of Factors Affecting the Species section for further discussion.

Issue 13: Several commenters observed that many of the conclusions presented in the proposed rule appear to be based on information provided by the Bighorn Institute.

Service Response: In accordance with the Act and its implementing regulations, the Service has used the best scientific and commercial data available in assessing the status of the Peninsular bighorn sheep and making the final listing determination. The Service obtained information from various sources including the CDFG, CDPR, the Desert Bighorn Council, published articles from scientific journals, and the Bighorn Institute.

Issue 14: One commenter disagreed with the suggestion in the proposed rule that depressed recruitment was probably linked to disease throughout most of the Peninsular bighorn sheep's range. The commenter went on to state that exposure to disease did not demonstrate a population was declining because bighorn sheep populations commonly are exposed to disease organisms. The commenter also recommended that listing be delayed until further research could determine the different factors affecting the Peninsular bighorn sheep and its decline.

Service Response: The proposed rule indicated that depressed recruitment probably was linked to a disease epizootic. This was the most reasonable conclusion at that time based on available information regarding the effects of disease in the Santa Rosa Mountains and the general decline in the number of Peninsular bighorn sheep. The presence of recurrent disease remains a likely cause for the overall continuing decline of Peninsular bighorn sheep numbers. However, disease is not the only factor negatively affecting this species. The Peninsular bighorn sheep in the United States has declined by at least 76 percent since 1971. Another factor, in addition to disease, that has contributed to low recruitment is an increase in predation rates (W. Boyce and E. Rubin, *in litt.* 1997). The final rule indicates that exposure to diseases such as blue tongue occurs in a significant portion of the Peninsular bighorn sheep's range. Any delay in listing this distinct population segment to await the results of research on the interaction of the various threats could result in postponement of implementation of conservation and recovery measures, thus, contributing further to the Peninsular bighorn sheep's decline. See Factor C in the Summary of Factors Affecting the Species Section for a discussion of this topic.

Issue 15: One commenter stated that the effects of cattle grazing on wild sheep needed to be re-examined because the pathogen *Pasteurella* is not transmitted by cattle, but by domestic sheep. Another commenter stated that *Pasteurella* had not been a problem for the Peninsular bighorn sheep and was, therefore, not relevant to the listing.

Service Response: The Service's concerns about cattle grazing relative to the conservation of Peninsular bighorn sheep is prompted by the potential of cattle to harbor pathogens such as PI–3 and blue tongue. Both of these viruses have likely contributed to Peninsular bighorn sheep mortality. In addition, *Pasteurella* sp. also infect mule deer and there is overlap in the range of mule deer, domestic sheep, and Peninsular bighorn sheep. Although the Service is unaware of *Pasteurella* sp. infections in Peninsular bighorn sheep, domestic sheep use areas adjacent to San Jacinto Mountain and could be a source for this infection.

Issue 16: One commenter stated that data are inadequate to demonstrate an increase in predation, and the potential effect of this threat on Peninsular bighorn sheep had not been assessed in the defined range.

Service Response: The Service concurs that predation and its effect on Peninsular bighorn sheep has not been conclusively assessed. However, an increase in predation in the northern Santa Rosa Mountains had been noted. Since publication of the proposed rule, further indication of an increase in predation due to mountain lions has been documented (W. Boyce and E. Rubin, *in litt.* 1997)

Issue 17: Several commenters expressed concern about the use of current information and recommended the Service use information that is unbiased and peer-reviewed. One commenter questioned how a listing decision could be rendered when information is unavailable for review or has not undergone the scrutiny of impartial analysis. This commenter made specific reference to work being conducted by Oliver Ryder, Ph.D. of CRES, on Weems bighorn sheep.

Service Response: As required, the Service used the best available scientific and commercial information for the final listing decision and all such information was accessible for public review and analysis. However, only information related to Peninsular bighorn sheep ecology or otherwise relevant to determining whether listing this distinct population segment was warranted was the subject of this review. Moreover, peer review of the listing proposal by three appropriate and independent specialists was solicited to ensure the best biological and commercial information was used.

Issue 18: Several commenters suggested that development within and adjacent to Peninsular bighorn sheep habitat was not detrimental and that the Service should focus on other causes of the decline, such as grazing of cattle in bighorn sheep habitat. One of the commenters stated that current mitigation measures needed to be compiled and analyzed to determine if listing of the Peninsular bighorn sheep was warranted.

Service Response: Populations of Peninsular bighorn sheep located adjacent to urban development, such as golf courses and suburban housing areas, are known to modify their behavior in non-adaptive ways. For example, abnormally high concentrations of ewes, rams, and lambs regularly forage and water at such developments in the Rancho Mirage area of California throughout all months of the year (DeForge and Osterman, pers. comm., 1997).

This altered behavior has exposed the northern Santa Rosa Mountains ewe group to several unnatural conditions leading to relatively high levels of mortality (DeForge 1997): excessive exposure to high levels of fecal material increasing the chance for the spread of disease; excessive use of an unnaturally moist environment suitable for harboring infectious disease and parasites; unusually high levels of adult mortality associated with predation; exposure to non-native and potentially toxic plants; short-term lamb abandonment leading to increased risk of lamb predation; and loss of ewe group "memory" of other available water and forage areas in their historic home range (Rubin, Ostermann, and DeForge, pers. comm., 1997). See Factors C and E for further discussion of these issues.

Issue 19: One commenter stated that the Service had not monitored or considered the population numbers of bighorn sheep in some mountain ranges, such as the Little San Bernardino and Chocolate mountains.

Service Response: The bighorn sheep occurring in the Little San Bernardino and Chocolate mountains are not a component of the distinct vertebrate population segment under consideration in this final listing rule. Besides the geographic separation, recent genetic research (Boyce *et al.* 1997) concluded the Peninsular bighorn sheep population "formed a discrete group

with relatively high gene flow," whereas, the genetic distance between three nearby Mojave populations of desert sheep including the bighorn sheep occurring in the Little San Bernardino and Chocolate mountains was more than three times greater. That is, the genetic distance between the Peninsular bighorn sheep and their nearest neighbors supports the conclusion that the Peninsular group is discrete and meets the definition of a distinct vertebrate population segment.

Issue 20: One commenter stated there is no evidence to support the conclusion that hikers are contributing to the decline of Peninsular bighorn sheep.

Service Response: Peninsular bighorn sheep are sensitive to human disturbance during critical periods, such as lambing. For example, hikers detrimentally affect survival and recovery of this species when this activity is in proximity to lambing areas and bighorn sheep abandon these areas. Additional impacts occur when human activity hinders the access of Peninsular bighorn sheep to water during times of stress. MacArthur *et al.* (1979) documented a 20 percent rise in mean heart rate when bighorn sheep were continuously exposed to people. Another study found that areas experiencing more than 500 visitor-days of use per year resulted in a decline of use by bighorn sheep (Graham 1971 *in* Purdy and Shaw 1980).

Issue 21: Several commenters stated that the bighorn sheep decline could have been avoided. The Service should have been proactive and worked with local land use planning agencies by providing guidance concerning potential project-related impacts on Peninsular bighorn sheep. In addition, one of the commenters recommended that communication between land-use planning agencies and the Service commence immediately and that private, State, and Federal parties be treated equitably in the conservation process.

Service Response: The Service has long been involved with local planning agencies within the range of the Peninsular bighorn sheep as a technical adviser. Recommendations of the Service have not always been incorporated into project design and location resulting in irretrievable impacts (see Response to *Issue 18*). The Service concurs that all involved parties should be treated equitably during future efforts to conserve and recover the species.

Issue 22: One commenter stated that the grazing of cattle on Federal lands should be terminated where the activity may impact Peninsular bighorn sheep. The commenter also stated that movement corridors should be conserved.

Service Response: The Service contends that activities impacting Peninsular bighorn sheep should be avoided to the extent possible and endorses the conservation of movement corridors. Upon the listing of the Peninsular bighorn sheep, the issue of cattle grazing and movement corridors will be evaluated, and appropriate actions to be taken will be identified as part of the species conservation and recovery process.

Issue 23: One commenter stated that the Peninsular bighorn sheep would benefit from the addition of golf courses.

Service Response: The Service is unaware of scientific information demonstrating that golf courses are beneficial to the long-term survival and recovery of Peninsular bighorn sheep. There is evidence that golf courses negatively impact Peninsular bighorn sheep through the spread of parasites (e.g., hookworms) and availability of toxic plants such as oleander. Furthermore, golf courses do not provide ideal forage for this species and the associated human activity disrupts the normal behavioral patterns of bighorn sheep (see Response to *Issue 18*).

Issue 24: One commenter recommended that the Peninsular bighorn sheep be relocated where interaction with people would be less likely to occur.

Service Response: The Peninsular bighorn sheep have specific habitat requirements within the Peninsular Mountain Ranges of southern California. The removal of an animal from its native habitat to another location provides no assurance of survival. For listed species, such removal and relocation would have to meet recovery and conservation objectives to be consistent with purposes of the Act.

Issue 25: Several commenters suggested it was unlikely that Federal listing of this population would result in protection beyond that already provided by the California Environmental Quality Act (CEQA) and CESA. In addition, the commenters predicted that Federal listing may be detrimental by making the approval process for bighorn sheep reintroductions or management actions more complex.

Service Response: Federal listing of the Peninsular bighorn sheep will complement the protection options available under State law through measures discussed below in the "Available Conservation Measures" section. The Service will use established procedures to evaluate management actions necessary to achieve recovery of the species and thereby avoid any undue implementation delays. In addition, Federal listing would provide additional resources for the conservation of the species through sections 6 and 8 of the Act.

Issue 26: Several commenters stated that listing of the Peninsular bighorn sheep was unnecessary because effective voluntary efforts exist for safeguarding this species at no public cost. Furthermore, the existing population occurs almost exclusively on lands administered by State or Federal agencies on which private actions will not occur.

Service Response: Voluntary efforts are important to conservation of Peninsular bighorn sheep, but, to date, these efforts have not stabilized or reversed the numerical decline. The effects of urban and commercial development, disease, and predation continue to represent foreseeable threats to this distinct population segment. The inadequacy of existing regulatory mechanisms to stabilize or reverse the decline is discussed in Factor D.

Issue 27: Several commenters stated that the Service has ignored existing efforts to conserve the Peninsular bighorn sheep. In addition, one of these commenters recommends the Service consider the metapopulation approach to the management of wild sheep in California. This same commenter explained that the Peninsular Ranges population of bighorn sheep probably represents one of the most intact metapopulations of this species from the standpoint of demography and corridors connecting demes.

Service Response: Several State and Federal management plans have been prepared for bighorn sheep. However, these plans have not effectively reversed the decline of the Peninsular bighorn sheep population. Federal listing will complement and add to these conservation efforts. Existing management plans and the population ecology of the Peninsular bighorn sheep will be important components in the development of a recovery plan.

Issue 28: One commenter discussed the history of bighorn sheep management in Mexico and indicated that it had been ineffective in the past. The commenter also stated that the current program has inadequate resources for addressing threats on bighorn sheep such as poaching, disease exposure, and habitat loss from feral livestock. The commenter concluded that listing of the Peninsular bighorn sheep may substantially contribute to

the conservation and recovery of these animals.

Service Response: Based on information received during the last comment period extension, the Mexican Government established a new conservation program in April 1997 for bighorn sheep in Baja California, Mexico. Given that there are significantly more bighorn sheep in Baja California, Mexico, as compared to southern California, there is more time to ascertain the effectiveness of the conservation program and the status of Peninsular bighorn sheep in this area. If the population of Peninsular bighorn sheep decline under the Mexican Government's conservation program, future listing of the animals may be appropriate.

Issue 29: One commenter stated that Mexican authorities had not been properly consulted and these authorities did not support listing.

Service Response: As required, the Service corresponded on February 21, 1992, and June 8, 1992, with the Mexican government when the Peninsular bighorn sheep was proposed for listing. Moreover, the Service reopened the public comment period on October 27, 1997, for an additional 15 days to acquire additional information on the status, distribution, and management of bighorn sheep in Baja California, Mexico. Comments were received from the Mexican government during this third, and last, comment period extension and were considered in making the final listing determination.

Issue 30: One commenter stated the Service that the purpose of the Act was to conserve wild species. The commenter stated that the proximity of the Bighorn Institute to private development was, therefore, not a legitimate justification for proposing the species as endangered.

Service Response: The Service concurs with the commenter about conservation of species in the wild (i.e., "conserve wild species"). The Bighorn Institute and Living Desert Museum maintain captive populations of Peninsular bighorn sheep for scientific and educational purposes. This use is thought to have no negative impact on free-ranging bighorn. However, the fact that the Bighorn Institute is located close to residential/commercial development was mentioned in the proposed rule as an indirect factor affecting Peninsular bighorn sheep.

Issue 31: Several commenters criticized the Service for not addressing the economic impacts of listing the Peninsular bighorn sheep population as endangered. One of these commenters stated that the Peninsular bighorn sheep should not be listed if it would stifle economic development.

Service Response: In accordance with 16 U.S.C. § 1533(b)(1)(A) and 50 CFR 424.11(b), listing decisions are made solely on the basis of the best scientific and commercial data available. In adding the word "solely" to the statutory criteria for listing a species, Congress specifically addressed this issue in the 1982 amendments to the Act. The legislative history of the 1982 amendments states: "The addition of the word "solely" is intended to remove from the process of the listing or delisting of species any factor not related to the biological status of the species. The Committee strongly believes that economic considerations have no relevance to determinations regarding the status of species and intends that the economic considerations have no relevance to determinations regarding the species' status.

Issue 32: One commenter indicated that a 30 day comment period for the listing proposal was inadequate and the continued processing of the proposed rule was prohibited by the Act.

Service Response: The Service has provided ample opportunity for public comment during this rule making process. The initial comment period for the proposed rule was open for 6 months. The Service reopened the comment period for an additional 30 days on April 7, 1997 (62 FR 16518), for an additional 15 days on June 17, 1997 (62 FR 32733), and then again for an additional 15 days on October 27, 1997 (62 FR 55564). See discussion under Previous Federal Action for added details.

Issue 33: One commenter stated that the Peninsular bighorn sheep should not be listed because once listed it becomes impossible to remove species from the list, and expressed concern regarding the closure of mountain areas to recreationists.

Service Response: A principal goal of the Service for listed species is to recover species to a point at which protection under the Act is no longer required. When the recovery goals for a species have been met, the Service may prepare a proposal to delist or reclassify the species based on the best available scientific and commercial information. The process for delisting or reclassifying a species, per section 4(b)(3)(A) of the Act, is similar to that used for listing. Regarding closure of mountain areas to recreationists, certain locations of special sensitivity, such as lambing areas, may be closed to prevent disturbance and promote the recovery of the Peninsular bighorn sheep. Most other recreational use restrictions would be unchanged.

Issue 34: One commenter recommended that the Service designate critical habitat concurrently with the listing of the Peninsular bighorn sheep. A second commenter disagreed with the Service's rationale for not proposing critical habitat but made no recommendation concerning the designation of critical habitat. Another commenter indicated that designation of critical habitat would not lead to increased poaching of the Peninsular bighorn sheep because of State listing and protection regulations. Commenters also stated that the discussions under the Critical Habitat and Available Conservation Measures sections in the proposed rule were contradictory.

Service Response: The Service has determined that designation of critical habitat would increase the threat of human activities to Peninsular bighorn sheep and that such a designation would not be beneficial to the species. The identification of such areas on critical habitat maps would likely call attention to the locations of bighorn sheep (especially lambing areas) and increase the degree of threat from human intrusion. Moreover, protection of habitat and other conservation actions are better addressed through recovery planning and section 7 consultation processes.

The discussions under Critical Habitat and Available Conservation Measures are not contradictory with respect to section 7. The Available Conservation Measures section addresses the conservation actions that result from listing. With or without critical habitat, Federal agencies are required to consult with the Service if an action may affect a listed species. Critical habitat is mentioned under Available Conservation Measures because regulations pertaining to section 7(a), 7(a)(2) and 7(a)(4) are reiterated. The responsibility of Federal agencies is discussed in general, and not in terms specifically related to the Peninsular bighorn sheep. For further discussion of this issue see the Critical Habitat section.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Peninsular bighorn sheep should be classified as an endangered distinct population segment. Procedures found at section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing

provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Peninsular bighorn sheep distinct population segment (*Ovis canadensis*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Peninsular bighorn sheep have been extirpated from several historic locations, including the Fish Creek Mountains (Imperial County) and the Sawtooth Range (San Diego County) (DeForge *et al.*, 1993). In the United States, the number of Peninsular bighorn sheep has declined from an estimated 1,171 individuals in 1971 to about 280 individuals in 1997 (DeForge *et al.* 1995; J. DeForge, *in litt.* 1997; E. Rubin and W. Boyce, *in litt.* 1996; W. Boyce and E. Rubin, *in litt*, 1997). Habitat loss (especially canyon bottoms), degradation, and fragmentation associated with the proliferation of residential and commercial development, roads and highways, water projects, and vehicular and pedestrian recreational uses are threats contributing to the decline of Peninsular bighorn sheep throughout its range.

Peninsular bighorn sheep are susceptible to fragmentation due to the distribution of habitat (narrow band at low elevation), use of habitat (e.g., occupying low elevations), and population structure. Restricted to elevations below the distribution of chaparral habitat (typically about 1,050 m (3,500 ft)), encroaching urban development and human related disturbance have the dual effect of restricting remaining animals to a smaller area and severing connections between ewe groups. The Peninsular bighorn sheep distinct population segment, like other bighorn sheep populations, is composed of ewe groups that inhabit traditional areas (cluster of canyons) and rams that move among these groups exchanging genetic material. Maintenance of genetic diversity allows small ewe groups to persist. The inability of rams and occasional ewes to move between groups erodes the genetic fitness of isolated groups. Urban and commercial development may ultimately fragment the metapopulation into isolated groups too small to maintain long-term viability, as apparently was the case in the extirpation of one ewe group in the United States in the recent past.

Urban development and associated increases in human activities in bighorn sheep habitat were reported to be the leading cause of extinction of an entire bighorn sheep population (ewes, rams, and lambs) in Tucson, Arizona (Krausman, pers. comm. 1997). In the River Mountains, Nevada, 9 of 17 marked desert bighorn sheep ewes altered their normal watering patterns; seven of these ewes abandoned the site (Leslie and Douglas 1980). Leslie and Douglas (1980) noted that, because ewes are more restricted in their movements and display a relatively high degree of fidelity to water sources, such abrupt changes in watering patterns are probably the result of extrinsic disturbances. Development has resulted in habitat abandonment in other bighorn sheep populations (Ferrier 1974). Other researchers have maintained that recreational encroachment can be most damaging during critical periods of the year for bighorn sheep, such as lambing (Geist 1971, Light 1973, Cowan 1974).

Abandonment of preferred habitat is anticipated to be detrimental to the long-term survival of Peninsular bighorn sheep. Abandonment of a lambing area in the Peninsular Ranges has been reported, and it has been attributed to human activities. The construction of a flood control project took place in Magnesia Canyon within the City of Rancho Mirage in 1982. This construction took place below a lambing area that was occupied by the northern Santa Rosa Mountains (SRM) ewe group. During the construction of the flood control project, the northern SRM ewe group relocated their lambing area from Bradly Peak (above Magnesia Canyon, and in direct line of site to the flood control project area) to Ramon Peak (DeForge, pers. comm., 1997). The distance between these two lambing areas is estimated at about 2.4 km (1.5 mi). Ramon Peak is situated away from areas occupied by humans, and human activities were correspondingly absent compared to Magnesia Canyon during construction. This relocation corresponded to the shift in habitat use and abandonment of some areas affected by the noise and view of humans during construction observed by DeForge and Scott (1982). DeForge and Scott (1982) also observed a marked difference in behavior when ewes with lambs used a watering area located 200 to 500 m (660 to 1650 ft) from the construction area. As further evidence that the abandonment of the lambing area was attributable to human activities, DeForge (pers. comm., 1997) also indicated that the ewe group re-occupied the Bradly Peak lambing area the following year after construction and human activities subsided. Approved and future projects such as Shadowrock Golf Course and Mountain Falls Golf Course, respectively, may result in the abandonment of the main remaining lambing area in the San Jacinto Mountains.

The Coachella Valley Association of Governments anticipates that by the year 2010 the human population there will increase from 227,000 to over 497,000, not including 165,000 to 200,000 seasonal residents. In 1989, the population of Imperial County was 116,000. The cities of El Centro, Imperial, and Calexico grew by about one-third between 1980 and 1989 (Bureau of Reclamation 1991). Increased human populations and associated commercial and residential development will likely continue to increase destruction of habitat and disrupt sheep behavioral patterns.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no open hunting season for Peninsular bighorn sheep in the United States. Although the limited opportunities for desert bighorn hunting in California create a temptation for taking without a license, poaching does not appear to be a problem at this time.

The Bighorn Institute and Living Desert Museum maintain captive populations of Peninsular bighorn sheep for scientific and educational purposes. This use is thought to have no negative impact on free-ranging bighorn.

C. *Disease or predation.* Disease is a major factor responsible for the precipitous decline of Peninsular bighorn sheep in the northern Santa Rosa Mountains and appears to significantly contribute to population declines elsewhere throughout its range. Elliott *et al.* (1994) found a higher level of exposure to viral and bacterial pathogens in the Peninsular bighorn sheep population than in other California bighorn sheep populations. Past higher exposure to pathogens suggests that disease may have been a major contributing factor in this distinct population segment's decline.

Bighorn sheep are susceptible to a variety of bacterial, fungal, and viral infections (DeForge *et al.* 1982, Turner and Payson 1982, Clark *et al.* 1985). Lambs and older sheep may be most susceptible to disease. Numerous endoparasites and ectoparasites are known to occur in this species (Russi and Monroe 1976, Lopez-Fonseca 1979). The relationship between disease, its transmission, and factors such as stress, density, competition, water availability, and disturbance are not well understood. Disease manifestation

probably occurs during stressful periods such as high or low population levels, reproductive activity, low nutrient availability, and climatic extremes (Taylor 1976, Turner and Payson 1982).

Disease is responsible for high lamb mortality rates in Peninsular bighorn sheep (Sanchez *et al.* 1988). In the northern Santa Rosa Mountains, excessive lamb mortality has occurred since 1977 (DeForge *et al.* 1995). DeForge *et al.* (1982) reported evidence that bighorn sheep lamb mortality in the Santa Rosa Mountains was due to pneumonia. Bacterial pneumonia is usually a sign of weakness caused by another agent such as a virus, parasite, or environmental stress that lowers an animal's resistance to disease. DeForge and Scott (1982) reported serological evidence that a combination of parainfluenza-3 (PI–3), blue tongue (BT), epizootic hemorrhagic disease (EHD), and contagious ecthyma (CE) viruses may be contributing initiating factors for the development of pneumonia in the Santa Rosa Mountains ewe group. In addition to exposure to the above mentioned diseases, antibody titers to respiratory syncytial virus (RSV) have been found in Peninsular bighorn sheep (Clark *et al.* 1985). Poor nutrition, predation, climatic changes, and human related impacts may contribute to high lamb mortality. Vaccination experiments have been conducted for BT and PI–3. Vaccines for PI–3 have been used with limited success in captive and wild sheep (Jessup *et al.* 1990).

Domestic and feral cattle can act as disease reservoirs. Several viruses discovered in sick bighorn sheep lambs were non-native and thought to be introduced by domestic livestock (DeForge, *in litt.* 1988). However, the potential role of livestock in disease transmission is not well understood. Staff of the Anza-Borrego Desert State Park (Park) completed a project to remove 119 feral cattle from the Park in 1990. Six types of viruses were detected in these cattle. Blood samples taken from cattle grazing in allotments adjacent to Peninsular bighorn sheep habitat within the Park have contained several viruses. Peninsular bighorn sheep in Mexico have also tested positive to exposure to viral and bacterial diseases (J. DeForge, pers. comm., 1997).

Other livestock may transmit diseases as well. Domestic sheep harbor bacteria (*Pasteurella* sp.) and viruses such as BT that can kill bighorn sheep, and close contact results in transmission to and the subsequent death of most or all of the exposed animals (Foreyt and Jessup 1982). Although no grazing allotments for domestic sheep have been issued by BLM or USFS in the Peninsular Ranges, the potential for their presence exists. Domestic sheep associated with commercial operations have been observed in the San Jacinto River along the northern edge of the San Jacinto Mountains. In addition, small numbers of domestic sheep are raised by private individuals living along the northern edge of the San Jacinto Mountains (A. Davenport, Fish and Wildlife Service, pers. obs. 1993).

Cattle or domestic sheep do not have to occupy Peninsular bighorn sheep habitat for disease transmission to occur. For example, Jessup *et al.* (1985) has found antibodies for this pathogen in mule deer. Blue tongue, a disease transmitted by a biting midge (*Culicoides* sp.), occurs in animals such as cattle, sheep, goats, mule deer, and bighorn sheep. Cattle appear to be capable of harboring the virus (Wallmo 1981, Jessup 1985, Jessup *et al.* 1990). Overlap in habitat use by Peninsular bighorn sheep, southern mule deer, and the biting midge may provide a pathway for disease transmission from deer populations associated with livestock to bighorn sheep. This pathway may involve either movement of an infected individual or the progression of an epizootic through the general deer population to Peninsular bighorn sheep where the two species overlap.

Based on available information, and given the susceptibility of bighorn sheep to introduced pathogens, disease will continue to pose a significant and underlying threat to the survival of Peninsular bighorn sheep. This situation is exacerbated by the presence of cattle and other livestock in and adjacent to areas occupied by Peninsular bighorn sheep.

Urban developments such as golf courses and associated housing areas also influence the effect of disease and predation on the Peninsular bighorn sheep. For example, high concentrations of ewes, rams, and lambs regularly forage and water at such developments in the Rancho Mirage area of California throughout all months of the year (DeForge and Osterman, pers. comm., 1997).

This behavior has exposed the northern Santa Rosa Mountains ewe group to several unnatural conditions leading to relatively high levels of mortality (DeForge 1997): excessive exposure to high levels of fecal material increasing the chance for the spread of disease; excessive use of an unnaturally moist environment suitable for harboring infectious disease and parasites; unusually high levels of adult mortality associated with predation; exposure to non-native and potentially toxic plants; short-term lamb abandonment leading to increased risk of lamb predation; and loss of ewe group "memory" of other available water and forage areas in their historic home range (Rubin, Osterman, and DeForge, pers. comm., 1997).

DeForge and Ostermann (in prep.) reported that urbanization was the leading known cause of death to Peninsular bighorn sheep occupying the northern Santa Rosa Mountains. During their investigation in the northern Santa Rosa Mountains, urbanization accounted for 34.2 percent of all recorded adult mortalities. Mortalities directly caused by urbanization were associated with ingestion of toxic, non-native plants, automobile collisions, and fences. Indirect causes of death associated with urbanization included parasite infestations and altered habitat use.

Exposure to high concentrations of feces can lead to unnaturally high levels of exposure to disease and parasites (Georgi 1969), and may contribute to Peninsular bighorn sheep population declines. Development in and adjacent to the Santa Rosa Mountains has established irrigated grass lawns, golf courses, and ponded waters providing environmentally suitable conditions for the strongyle parasite to successfully complete its life cycle, and increase its presence in a naturally arid environment. Sheep can be exposed to the strongyle parasite from the feces of an infected individual (Georgi 1969). Strongyle parasites have been reported in the northern Santa Rosa Mountains ewe group (DeForge and Osterman 1997). Animals exhibiting symptoms from the infection of a strongyle parasite are less active, forage less, tend to stay unusually close to water sources, become weak, are extremely emaciated, and exhibit anemia (Georgi 1969). Mortality from infection of the strongyle parasite may be experienced in sheep, particularly under situations that create additional stress (Georgi 1969).

Strongyle parasites are common in domestic ruminant, horse, and pig hosts, and require moist environments for the survival of its larval stages outside of the host. The strongyle parasite life cycle cannot be completed in arid environments, and strongyle infestations are generally rare in desert regions (Georgi 1969). However, between 1991 and 1996, more than 85 percent of the Peninsular bighorn sheep sampled in the Santa Rosa Mountains ewe group were infected with the strongyle parasite (DeForge and Osterman, unpubl. data). Ewes, rams, and lambs are susceptible to infection

with the strongyle parasite. Clinical signs of strongyle parasites in the Peninsular bighorn sheep have been reported only from the Santa Rosa Mountains ewe groups. Strongyle parasites have not been detected in the San Jacinto Mountains (SJM) ewe groups, and are considered rare or absent in other ewe groups.

Peninsular bighorn sheep exhibiting physiological stress related to an infestation of the strongyle parasite are at greater risk of predation, and less likely to successfully reproduce. Presently, there is no local or regional program to inoculate Peninsular bighorn sheep against non-native, introduced diseases, viruses, and parasites.

The reduction of disease outbreaks centers, in large part, on reducing factors that stress Peninsular bighorn sheep. Stress predisposes animals to disease (DeForge 1976). One of the major factors that stress bighorn sheep is human encroachment into their habitat. The decline of the Peninsular bighorn sheep is markedly steeper where the population borders the developing areas of the Coachella Valley. The decline in the population adjacent to urban areas in the Coachella Valley has been 35 percent greater than that occurring in Anza Borrego Desert State Park. Disease has been documented as an important factor in the decline of the population in the northern Santa Rosa Mountains (DeForge and Scott 1982, DeForge et al. 1982). Although the pathogens responsible for the diseases in the Santa Rosa Mountains have also been detected in Anza Borrego Desert State Park (Elliott et al. 1994), the population in Anza Borrego Desert State Park has declined at a slower rate (57 percent versus 92 percent).

Increased risk of predation has also been attributed to unnatural environments found at the urban interface. DeForge (pers. comm., 1997) has observed higher numbers of adult Peninsular bighorn sheep mortalities caused by mountain lions (*Felis concolor*) closer to the urban environment as compared to wild lands. Domestic dogs often occur along the urban-wild lands interface, and are also capable of injuring and killing lambs, ewes, and young or unhealthy rams. Encroaching development not only increases the abundance of domestic dogs along the urban-wild lands interface, but also creates unnatural landscape characteristics such as hedge rows, dense patches of tall vegetation, and other unnatural cover suitable for predators to hide and ambush potential prey. The Service has received complaints from residents of Thunderbird Cove that the presence of Peninsular bighorn sheep feeding on lawns attracts mountain lions, which some of the residents have observed.

Natural predation is not known to be a limiting factor in free-roaming desert bighorn sheep populations having adequate escape cover (Blaisdell 1961, Elliot 1961, and Weaver 1961). According to Wilson (1980), predation, as a mortality factor, decreases in significance as the size of a population increases. In addition, major predation problems have occurred with populations occupying restricted home ranges or fenced areas (Cooper 1974, Kilpatrick 1975). Compared to the northern Santa Rosa Mountains ewe group, ewe groups to the south, the majority of which do not occupy restricted home ranges, have experienced high rates of natural predation compared to urban-related mortalities (Boyce 1995). Ewe group sizes in these areas are larger than the northern Santa Rosa Mountains and San Jacinto Mountains ewe groups, and can likely tolerate such predation levels.

Coyote (*Canis latrans*), bobcat (*Lynx rufus*), mountain lion, gray fox (*Urocyon cinereoargenteus*), golden eagle (*Aquila chryseatos*), and free-roaming domestic dogs prey upon bighorn sheep. Predation generally has an insignificant effect except on small populations. In recent years, mountain lion predation of Peninsular bighorn sheep appears to have increased in the northern Santa Rosa Mountains (J. DeForge, pers. comm., 1991, W. Boyce and E. Rubin, *in litt.* 1997) and sheep encounters with domestic dogs are likely to increase with more urban development. The deaths of several radio-collared Peninsular bighorn sheep in Anza Borrego State Park have been attributed to mountain lions (W. Boyce and E. Rubin, *in litt.* 1997).

D. *The inadequacy of existing regulatory mechanisms.* The Peninsular bighorn sheep has been listed as threatened by the State of California since 1971 (CDFG 1991). Pursuant to the California Fish and Game Code and the CESA, it is unlawful to import or export, take, possess, purchase, or sell any species or part or product of any species listed as endangered or threatened. Permits may be authorized for certain scientific, educational, or management purposes. The CESA requires that State agencies consult with the CDFG to ensure that actions carried out are not likely to jeopardize the continued existence of listed species. However, most of the activities occurring within the range of the Peninsular bighorn sheep are not State authorized, funded, or permitted, resulting in few consultations under the CESA.

Shadowrock Golf Course and Altamira represent examples of locally approved projects that could have significant adverse effects on the Peninsular bighorn sheep. The City of Palm Springs approved the Shadowrock project which would eliminate important canyon bottom habitat and compromise or curtail sheep movement corridors. In addition, a settlement agreement between the developer of Shadowrock and the CDFG allows the project to proceed with only minor changes from the original design. Similarly, the City of Palm Springs has processed the Andreas Cove project proposal under a Negative Declaration, rather than the more rigorous Environmental Impact Report analysis. Moreover, the General Plans for most of the cities in the Coachella Valley inadequately address potentially significant development threats to the long-term conservation of Peninsular bighorn sheep. The Service is aware of approximately 15 additional project proposals that have the potential to adversely effect this species.

Regional conservation planning efforts are underway within the range of the Peninsular bighorn sheep, but these efforts are either incomplete, awaiting funding and implementation, or unproven for this distinct population segment. Given the development pressures and history of project approval in the Coachella Valley, the Service is concerned for the remaining Peninsular bighorn sheep in this area.

The Peninsular bighorn sheep receives some benefit from the presence of least Bell's vireo (*Vireo bellii pusillus*) and southwestern willow flycatcher (*Empidonax traillii extimus*) in its range; both are federally listed species. However, this benefit is limited due to the specialized habitats (riparian woodland) utilized by these birds. Similarly, section 404 of the Clean Water Act provides limited protection to small portions of the Peninsular bighorn sheep's range through the U.S. Army Corps of Engineers' (Corps) regulation of the discharge of dredged and fill material into certain waters and wetlands of the United States.

The California Fish and Game Code provides for management and maintenance of bighorn sheep. The policy of the State is to encourage the preservation, restoration, utilization, and management of California's bighorn sheep. The CDFG supports the concept of separating livestock from bighorn sheep (to create buffers to decrease the potential for disease transmission) through purchase and elimination of

livestock allotments. However, it has not been a policy of the CDFG to revoke current State livestock permits (State of California 1988), nor does the State have authority to regulate grazing practices on Federal lands. Accordingly, State listing has not prompted the BLM or USFS to effectively address disease transmission associated with Federal livestock grazing programs.

Since the Peninsular bighorn sheep was listed by the State of California in 1971, the CDFG has: (1) prepared management plans for the Santa Rosa Mountains and for the McCain Valley area of eastern San Diego County; (2) acquired 30,000 acres of land in the Santa Rosa Mountains; (3) initiated demographic, distributional, and disease research; and (4) established three ecological reserves that protect important watering sites. These actions are important to Peninsular bighorn sheep conservation, but, are not sufficient to stem the long-term population decline.

The BLM and the USFS manage lands that contain habitat for Peninsular bighorn sheep. The BLM has management plans that include management activities for the Peninsular bighorn sheep. The San Bernardino National Forest Plan also addresses the Peninsular bighorn sheep. Both agencies administer grazing allotments on portions of their land. The Bureau of Indian Affairs, Bureau of Reclamation, and the Department of Defense also conduct activities within or adjacent to the range of this distinct population segment. The BLM, CDFG, CDPR, USFS Service, and Service are jointly developing the Peninsular Ranges Coordinated Bighorn Sheep Metapopulation Management Plan (BLM *et al.* 1993). The completion of this plan is pending. Current Federal management plans have not stopped the decline in numbers of Peninsular bighorn sheep on Federal lands.

E. *Other natural or manmade factors affecting its continued existence.* Recurrent drought, disturbance at watering sites, urban and agricultural water withdrawals, and domestic livestock use decrease the amount of water available for Peninsular bighorn sheep. In particular, small ewe groups are affected. Peninsular bighorn sheep, similar to other bighorn sheep, exhibit a seasonal pattern of distribution based on forage and water availability. Water is available via tenajas (natural catchment basins adjacent to streams), springs, and guzzlers. During late summer and early winter (July to November), when water requirements and breeding activities are at a peak, the sheep tend to concentrate near water sources, particularly as tenajas and springs dry up. During this time, the sheep depend on reliable water and food sources. Bighorn sheep require a quantity of water approximately equal to 4 percent of their body weight (1 gallon) per day during the summer months and a dependable water supply is needed at about 2-mile intervals (Blong and Pollard 1968). When water is not available in sufficient quantities (especially during hot, dry weather) the mortality rate for older sheep, lambs, and sick or injured animals is likely to increase.

Several studies have shown that bighorn sheep respond to human presence (as well as roads and housing developments) by altering behavior patterns to avoid contact. This behavioral response may preclude or disrupt sheep use of essential water sources, mineral licks, feeding areas, or breeding sites (Hicks and Elder 1979, Hamilton *et al.* 1982, MacArthur *et al.* 1982, Miller and Smith 1985, Krausman and Leopold 1986, Sanchez et al. 1988). Proposed country club/residential developments that have been approved or proposed within or immediately adjacent to Peninsular bighorn sheep habitat will substantially increase human activity. Unrestricted use of hiking and mountain bike trails in sensitive areas could further disrupt bighorn behavior and negatively affect this species. A reversal in behavior has been noted by the immediate return of Peninsular bighorn sheep to areas that were recently closed off to hikers in the Santa Rosa Mountains (e.g., Magnesia Falls Canyon) (Ken Corey, U.S. Fish and Wildlife Service, pers. com., 1997)

Some species of ornamental plants, associated with urban developments, have been attributed to causes of mortality in bighorn sheep (Wilson et al. 1980, DeForge 1997). Between 1991 and 1996, five Peninsular bighorn sheep in the northern Santa Rosa Mountains ewe group died from ingesting ornamental, toxic plants such as oleander (*Nerium oleander*) and laurel cherry (*Prunus* sp.) (DeForge and Ostermann 1997). A toxic, ornamental nightshade plant may have caused the death of a young ram (a necropsy revealed an unknown species of nightshade) in Palm Springs in 1970 (Weaver and Mensch 1970). Due to the absence of comprehensive studies of the toxicity of ornamental plants to bighorn sheep, only the two plant species mentioned above are known to be poisonous to the Peninsular bighorn sheep. It is expected that more species of ornamental plants are toxic to this species (DeForge, pers. comm. 1997).

Collisions with vehicles also are a source of Peninsular bighorn sheep mortality. Turner (1976) reported Peninsular bighorn sheep being killed as a result of automobile collisions on Highway 74 in areas where blind curves exist in known sheep movement areas. The Thunderbird Estates and golf course is located across Highway 111 (on the east side) from Peninsular bighorn sheep habitat in Rancho Mirage. Individuals from the northern Santa Rosa Mountains ewe group cross over Highway 111, or use a flood control channel that is under Highway 111, to access forage and water at this golf course (DeForge, pers. comm 1997). Dominant ewes will lead five to seven other ewes and rams to the golf course across Highway 111 which has led to collisions with automobiles (DeForge, pers. comm. 1997). DeForge and Ostermann (1997) also reported that nine Peninsular bighorn sheep in the Santa Rosa Mountains were hit and killed by automobiles between 1991 and 1996, and in combination with other urban-related factors, accounted for the majority of mortalities.

The Peninsular bighorn sheep apparently is currently functioning as a metapopulation (BLM *et al.* 1993, Boyce *et al.* 1997); there is interaction between separate groups. However, the potential loss of dispersal corridors and habitat fragmentation by residential and commercial development and roads and highways may isolate certain groups. Isolation increases the chances for inbreeding depression by preventing rams from moving among ewe groups and eliminating exploratory and colonizing movements by ewe groups into new or former habitat. Inbreeding and the resultant loss of genetic variability can result in reduced adaptiveness, viability, and fecundity, and may result in local extirpations. Small, isolated groups are also subject to extirpation by naturally occurring events such as fire. Although inbreeding has not been demonstrated in the Peninsular bighorn sheep, the number of sheep occupying many areas is critically low. The minimum size at which an isolated group can be expected to maintain itself without the deleterious effects of inbreeding is not known. Researchers have suggested that a minimum effective population size of 50 is necessary to avoid short-term inbreeding depression, and 500 to maintain genetic variability for long-term adaptation (Franklin 1980). Berger (1990) studied bighorn sheep populations in the southwestern United States and found that all populations with less than 50 individuals became extinct within 50 years. Berger (1990) concluded that extinction in

populations of this size cannot be overcome without intensive management, because 50 individuals, even in the short-term, do not constitute a viable population size. This issue is complicated because of the structure and function of bighorn sheep populations. Because they appear to be functioning as a type of metapopulation, the effective size of a population is actually larger. That is, adjacent groups must be taken into consideration in determining the long-term viability of a group or an assemblage of groups. For example, connected groups (ewe herds) can be isolated from the other groups through the loss of intervening groups. The loss of an intervening group is detrimental to the long-term viability of the overall population due to the loss itself, and through the potential genetic and demographic isolation of the remaining groups. Other causes of mortality such as road kills may significantly affect the continued survival of small groups that are experiencing depressed recruitment.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this distinct vertebrate population segment in determining to make this rule final. Based on this evaluation, the Service finds that the Peninsular bighorn sheep is in danger of extinction throughout a significant portion of its range due to: (1) disease; (2) insufficient lamb recruitment; (3) habitat loss, degradation, and fragmentation by urban and commercial development; and (4) predation coinciding with low population numbers. Because of the threats and the decline of the species, the preferred action is to list the Peninsular bighorn sheep as endangered. Threatened status would not accurately reflect the rapid, ongoing decline of, and imminent threats to, the Peninsular bighorn sheep.

Status of Peninsular Bighorn Sheep Currently Held in Captivity

Under section 9(b)(1) of the Act, certain prohibitions applicable to listed species would not apply to Peninsular bighorn sheep held in captivity or in a controlled environment on the date of publication of any final rule, provided that such holding and subsequent holding or use of these sheep was not in the course of a commercial activity. In addition, certain prohibitions applicable to listed species would not apply to Peninsular bighorn sheep taken by hunters prior to publication of this final rule.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) 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 (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it was listed, upon a determination 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 required.

Section 4(a)(3) of the Act, as amended, and its implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Peninsular bighorn sheep distinct population segment. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the 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 Service concludes that critical habitat designation for the Peninsular bighorn sheep is not prudent because both of the described situations exist. Bighorn sheep life history research and population status surveys have been conducted for over 40 years (DeForge *et al.* 1995) and much of this work is ongoing. As a consequence, the distribution and location of Peninsular bighorn sheep in the United States are well known within the scientific community. The Peninsular bighorn sheep is a majestic and popular animal in the eyes of the general public. Attractive areas for recreational hiking and possible observation points for Peninsular bighorn sheep have been identified in commercially available information sources (Palm Springs Desert Access Guide (BLM 1978); Santa Rosa Mountains National Scenic Area Trails Map (Coachella Valley Trails Council 1995); Palm Canyon Trail Map 1995). The cumulative pressure of human attraction to the scenic canyons and mountains occupied by bighorn sheep has led to the proliferation of new, unauthorized trails that are becoming an increasing concern of land management agencies and scientific organizations. Annual aerial censuses by the Bighorn Institute and CDFG recently identified several new trails through important habitat areas in the vicinity of La Quinta (J. DeForge, pers. comm., 1998). Similarly, BLM recently discovered a newly constructed trail on its lands in the hills above Cathedral City and Rancho Mirage, through a lambing area. BLM and others are attempting to rehabilitate the trail (J. Dugan, pers. comm. 1997).

The majority of sheep range is owned by State and Federal agencies and managed for multiple human uses, especially recreational pursuits. Four of eight ewe groups in the U.S. largely occur in the Anza Borrego State Park, renowned as a premier hiking and camping destination. The remaining four ewe groups largely occur within BLM's Santa Rosa Mountains National Scenic Area, which is intended to expand recreational opportunities through acquiring private lands for public use and enjoyment. Coachella Valley commercial interests are aggressively promoting and developing outdoor recreational industries that capitalize on the scenic beauty of the Santa Rosa and San Jacinto mountains. These industries and activities include jeep nature tours, mountain biking, hiking, horseback riding, dog walking, camping, sight-seeing, and other ecotourist forms of recreation in bighorn sheep habitat that often use bighorn sheep images as advertising themes, corporate and civic logos, etc. During the more temperate months of October through April, the Coachella Valley attracts millions of tourists and seasonal residents from across the Country and around the world. The timing of maximum human use levels corresponds with particularly sensitive periods in bighorn sheep life history, including the lambing season, rut, and the late summer water stress period.

Publication of detailed critical habitat maps and descriptions, as required with critical habitat designation, would make the location of bighorn sheep more readily available to the general public and serve as further advertisement for human uses in sensitive areas. Human activity in bighorn sheep habitat has been identified as a threat (see Factor E of "Summary of Factors Affecting the Species"). An increase in human activity, even when harm is not intended, would disrupt bighorn sheep behavior and could cause abandonment of essential environments (e.g., lambing areas or watering holes) (Cowan and Geist 1971, Hicks and Elder 1979,

MacArthur *et al.* 1982, Hamilton *et al.* 1982, Sanchez *et al.* 1988). Desert-dwelling bighorn sheep are inherently slow to recolonize vacant habitat (Bleich *et al.* 1990). Thus, critical habitat designation would increase the degree of threat to the Peninsular bighorn sheep and result in harm to this distinct population segment rather than aid in its conservation.

In addition, designation of critical habitat likely would not benefit the conservation of this distinct population segment. Section 7(a)(2) of the Act requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded or carried out by such agency, does not jeopardize the continued existence of a federally listed species or result in the destruction or adverse modification of designated critical habitat. This latter requirement is the only mandatory legal consequence of a critical habitat designation. Critical habitat designation provides protection only on Federal lands or on private or State lands when there is Federal involvement through authorization or funding of, or participation in, a project or activity. Almost half the habitat land area occupied by the Peninsular bighorn sheep in the United States is owned and managed by the State of California. The remainder is almost evenly divided between private and Federal ownership (see BACKGROUND section). The protection afforded under section 7 seldom extends onto State lands. Therefore, any potential designation of critical habitat on State lands (which account for about half of the U.S. range) would not be expected to benefit the bighorn sheep. Similarly, a section 7 nexus would seldom occur on private lands occupied by bighorn sheep because arid, upland habitats typically do not support jurisdictional waters or wetlands regulated under section 404 of the Clean Water Act.

Section 7 consultation is most likely to occur with the BLM concerning minerals rights for mining, granting of rights-of-way, recreational use permits, and management of grazing allotments. In addition, consultation with the Corps through permit application review under section 404 of the Clean Water Act may occur.

With about 75 percent of the U.S. range occurring on State and private lands with a limited section 7 nexus, potential benefits largely would be restricted to the remaining 25 percent of habitat that occurs on Federal lands. However, designation of those areas necessary for conservation (i.e., recovery) of the species cannot be accomplished primarily on Federal lands. In addition, for recovery planning under section 4 of the Act, designating critical habitat would not aid in creating a Peninsular bighorn sheep management plan, addressing transmission of diseases and establishing numerical population goals for long-term survival of the species, nor directly affect areas not designated as critical habitat. These types of issues will be addressed through the recovery planning process, wherein the Service establishes a framework for cooperation among key stakeholders and interest groups to prepare and implement a recovery plan based on private and public sector collaboration in defining and achieving recovery.

The Service acknowledges that critical habitat designation may provide some benefits to a species by identifying areas important to a species' conservation and calling attention to those areas in special need of protection. A critical habitat designation contributes to species conservation primarily by highlighting important habitat areas and by describing the features within those areas that are essential to the species. However, the Service is pursing alternative means to achieve the objective of disseminating information on important habitat areas by working directly with Federal and State land agencies and private landowners to develop a coordinated management plan for the Peninsular bighorn sheep.

In summary, there would be substantial risks to this bighorn sheep distinct population segment by publicizing maps of areas of occupancy and locations of habitats. Weighed against the fact that there would be little or no additional benefit to the species, the Service finds that designation of critical habitat for the Peninsular bighorn sheep is not prudent.

The Service will continue in its efforts to obtain more information on Peninsular bighorn sheep biology and ecology, including essential habitat characteristics, current and historic distribution, disease control, and other factors that would contribute to the conservation of the species. The information resulting from these efforts will be used to identify measures needed to achieve conservation of the species, as defined under the Act. Such measures could include, but are not limited to, development of a recovery plan, agency management plans, and conservation agreements with the State, other Federal agencies, local governments, and private landowners and organizations.

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. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, 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 Endangered Species Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service 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 the Service.

Federal agency actions that may require conference and/or consultation as described in the preceding paragraph include those within the jurisdiction of the Bureau of Indian Affairs, BLM, USFS, Corps, and Department of Defense. The Peninsular bighorn sheep occurs on private and State-owned land as well. Where the Peninsular bighorn sheep occurs on private lands there is little or no Federal involvement except where access is provided over Federal lands or permits are required from the Corps under the Clean Water Act. The BLM and COE are currently conferencing with the Service under section 7 of the Act to address the impacts associated with granting rights-of-way for several activities (e.g., recreational access).

The Act and implementing regulations found at 50 CFR 17.21 set

forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, as codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. For endangered species, such permits are available for scientific purposes, to enhance the propagation or survival of the species, or for incidental take in connection with otherwise lawful activities.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practical at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within a species' range. Activities that the Service believes could potentially harm the Peninsular bighorn sheep and result in take include, but are not limited to:

(1) Unauthorized trapping, capturing, handling or collecting of Peninsular bighorn sheep. Research activities, where sheep are trapped or captured, will require a permit under section 10(a)(1)(A) of the Endangered Species Act.

(2) Unauthorized destruction or degradation of habitat through, but not limited to, clearing vegetation, bulldozing terrain, and disturbing natural drainage systems;

(3) Unauthorized destruction of habitat that will likely lead to habitat fragmentation and isolation of ewe herds.

(4) Unauthorized livestock grazing that could result in transmission of disease or habitat destruction.

Activities that the Service believes are unlikely to result in a violation of section 9 are:

(1) Possession, delivery, or movement, including interstate transport and import into or export from the United States, involving no commercial activity, of dead specimens of this distinct population segment that were collected prior to the date of publication in the **Federal Register** of the final regulation adding this distinct population segment to the list of endangered species;

(2) Accidental roadkills or injuries by vehicles conducted in compliance with applicable laws, on designated public roads as constructed upon the date of publication in the **Federal Register** of the final regulation adding this distinct population segment to the list of endangered species;

(3) Normal, authorized recreational activities in designated campsites and on authorized trails.

(4) Lawful residential lawn maintenance activities including the clearing of vegetation as a fire break around one's personal residence.

Questions regarding any specific activities should be directed to the Service's Carlsbad Field Office (see **ADDRESSES** section). Requests for copies of the regulations regarding listed wildlife and about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 Northeast 11th Avenue, Portland, Oregon 97232–4181 (503/231–6241; FAX 503/231–6243)

Reasons for Effective Date

The Service is concerned that the issuance of the final rule for the Peninsular bighorn sheep may result in the destruction of habitat essential for maintaining the San Jacinto and Santa Rosa Mountain herds. In addition, any delay in the effective date of this rule provides an opportunity for habitat destruction in other portions of its range in the United States. Habitat has been destroyed outside the regulatory process at the Traditions Project in La Quinta. There is an existing golf course development proposal to grade essential habitat in the Palm Springs area. Because of the immediate threat posed by these activities, the Service finds that good cause exists for this rule to take effect immediately upon publication in accordance with 5 U.S.C. § 553(d)(3).

National Environmental Policy Act

The Fish and Wildlife Service has 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 Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

References Cited

A complete list of references cited in this rule is available upon request from the Carlsbad Field Office of the U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Author: The primary author of this final rule is Arthur Davenport of the Carlsbad Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, Transportation.

Regulation Promulgation

Accordingly, the Service amends Part 17, Subchapter B of the Chapter I, 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, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife:

§ 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						
Mammals:							
*	*	*	*	*	*	*	
Bighorn sheep, (Peninsular Ranges population).	*Ovis canadensis*	U.S.A. (western conterminous states), Canada (southwest), Mexico (north).	U.S.A., Peninsular Ranges of CA.	E	634	NA	NA
*	*	*	*	*	*	*	

Dated: March 6, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–6998 Filed 3–17–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208298–8055–02; I.D. 031398A]

Fisheries of the Exclusive Economic Zone Off Alaska; Inshore Component Pollock in the Aleutian Islands Subarea

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the amount of the 1998 pollock total allowable catch (TAC) apportioned to vessels catching pollock for processing by the inshore component in the AI of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 13, 1998, until 2400 hrs, A.l.t., December 31, 1998.

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

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

In accordance with § 679.20(c)(3)(iii), the amount of the 1998 pollock total allowable catch (TAC) apportioned to vessels catching pollock for processing by the inshore component in the AI of the BSAI was established as 7,705 metric tons (mt) by the Final 1998 Harvest Specifications of Groundfish for the BSAI (to be published March 16, 1998).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the amount of the 1998 pollock TAC apportioned to vessels catching pollock for processing by the inshore component in the AI of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 7,205 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the AI of the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the amount of the 1998 pollock TAC apportioned to vessels catching pollock for processing by the inshore component in the AI of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. The fleet has already taken the amount of the 1998 pollock TAC apportioned to vessels catching pollock for processing by the inshore component in the AI of the BSAI. Further delay would only result in overharvest which would disrupt the FMP's objective of providing sufficient pollock as bycatch to support other anticipated groundfish fisheries. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § . 679.20 and is exempt from review under E.O. 12866.

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

Dated: March 13, 1998.

Gary C. Matlock,

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

[FR Doc. 98–7030 Filed 3–13–98; 3:48 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 52
Wednesday, March 18, 1998

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–14–AD]

RIN 2120–AA64

Airworthiness Directives; Glaser-Dirks Flugzeugbau GmbH Model DG–400 Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Glaser-Dirks Flugzeugbau GmbH (Glaser-Dirks) Model DG–400 gliders. The proposed AD would require replacing the upper rubber shock mounts with mounts made of stainless steel. The proposed AD would also require inspecting the rear plate of the propeller mount for cracks and proper mounting, and replacing or modifying as necessary. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent failure of the propeller suspension system caused by cracks in the propeller mounts, which could result in loss of the propeller with consequent reduced glider controllability.

DATES: Comments must be received on or before April 17, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–14–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from DG Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–14–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, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–14–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on all Glaser-Dirks Model DG–400 gliders. The LBA reports incidents where engine vibrations caused cracks at the upper rubber shock mounts and, in one incident caused a crack at the rear plate of the propeller mount.

These conditions, if not corrected, could result in failure of the propeller suspension system, which could lead to loss of the propeller with consequent reduced glider controllability.

Relevant Service Information

Glaser-Dirks has issued Technical Note No. 826/11, dated August 29, 1984, which specifies replacing the upper rubber shock mounts with mounts made of stainless steel. This technical note also includes procedures for:

—inspecting the rear plate of the propeller mount for cracks and an excessive gap between the aluminum blocks and the plate (more than 1 mm or .04 inches); and

—installing washers if an excessive gap exists between the aluminum blocks and the plate.

The LBA classified this service bulletin as mandatory and issued German AD 84–157, dated September 24, 1984, in order to assure the continued airworthiness of these gliders in Germany.

The FAA's Determination

This glider model is manufactured in Germany 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 LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Glaser-Dirks Model DG–400 gliders of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require the following:

—replacing the upper rubber shock mounts with mounts made of stainless steel;

—inspecting the rear plate of the propeller mount for cracks and an excessive gap between the aluminum blocks and the plate (more than 1 mm or .04 inches);

—replacing the rear plate of the propeller mount if cracks are found; and

—installing washers if an excessive gap exists between the aluminum blocks and the plate.

Accomplishment of the proposed shock mounts replacement, the proposed inspections, and the proposed installation would be required in accordance with the technical note previously referenced. Accomplishment of the proposed propeller mount replacement, as required, would be required in accordance with the applicable maintenance manual.

Difference Between the Technical Note, German AD, and This Proposed AD

Both Glaser-Dirks Technical Note No. 826/11, dated August 29, 1984, and German AD 84–157, dated September 24, 1984, both specify accomplishing the actions proposed in this AD prior to further flight. The FAA does not have justification for requiring the proposed action prior to further flight. Instead, the FAA has determined that 3 calendar months is a reasonable time period for accomplishing the actions in the proposed AD.

Compliance Time of the Proposed AD

The compliance time of the proposed AD is presented in calendar time instead of hours time-in-service (TIS) because of the typical usage of the affected gliders. For example, an operator of an affected glider may only utilize the glider 50 hours TIS in a year, while another operator may utilize an affected glider 50 hours TIS in one month. The FAA has determined that a compliance based on calendar time should be utilized in the proposed AD in order to assure that the unsafe condition is addressed on all gliders in a reasonable time period.

Cost Impact

The FAA estimates that 35 gliders in the U.S. registry would be affected by the proposed AD, that it would take approximately 6 workhours per glider to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $100 per glider. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $16,100, or $460 per glider.

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 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) 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 has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Glaser-Dirks Flugzeugbau GMBH: Docket No. 98–CE–14–AD.

Applicability: Model DG–400 gliders, all serial numbers, certificated in any category.

Note 1: This AD applies to each glider 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 gliders 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 in the body of this AD, unless already accomplished.

To prevent failure of the propeller suspension system caused by cracks in the propeller mounts, which could result in loss of the propeller with consequent reduced glider controllability, accomplish the following:

(a) Within the next 3 calendar months after the effective date of this AD, replace the upper rubber shock mounts with mounts made of stainless steel in accordance with the Instructions section of Glaser-Dirks Technical Note TN 826/11, dated August 29, 1984.

(b) Within the next 3 calendar months after the effective date of this AD, inspect (using 2× or greater lens) the rear plate of the propeller mount for cracks and an excessive gap between the aluminum blocks and the plate (more than 1 mm or .04 inches). Accomplish these inspections in accordance with the Instructions section of Glaser-Dirks Technical Note TN 826/11, dated August 29, 1984.

(1) If any cracks are found in the propeller mount, prior to further flight, replace the propeller mount with an uncracked mount in accordance with the applicable maintenance manual.

(2) If an excessive gap exists between the aluminum blocks and the plate, prior to further flight, install washers in accordance with the Instructions section of Glaser-Dirks Technical Note TN 826/11, dated August 29, 1984.

(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 glider to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate

FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to Glaser-Dirks Technical Note No. 826/11, dated August 29, 1984, should be directed to DG Flugzeugbau GmbH, Postfach 4120, D–76625 Bruchsal 4, Germany; telephone: +49 7257–89–0; facsimile: +49 7257–8922. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in German AD 84–157, dated September 24, 1984.

Issued in Kansas City, Missouri, on March 10, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6946 Filed 3–17–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANM–04]

Proposed Modification of Class D Airspace and Establishment of Class E Airspace; Klamath Falls, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposal would modify the Class D Airspace area at Klamath Falls, OR, by amending the effective hours to coincide with the Klamath Falls control tower hours of operation. This proposal also would establish Class E airspace from the surface at Klamath Falls International Airport when the Klamath Falls control tower is closed. The intended effect of this action is to clarify when two-way radio communication with the Klamath Falls tower is required and to provide adequate Class E airspace for instrument approach procedures when the Klamath Falls control tower is closed.

DATES: Comments must be received on or before May 4, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 98–ANM–04, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 98–ANM–04, 1601 Lind Avenue SW, Renton, Washington 98055–40506; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–ANM–04." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above, both before and after the closing date, for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) to modify Class D airspace while also establishing class E airspace at Klamath Falls, OR. Currently, this airspace is designated as Class D when the Klamath Falls control tower is in operation. Nevertheless, Class E airspace to the surface is needed for Instrument Flight Rules (IFR) operations at Klamath Falls when the control tower is closed. The intended effect of this action is to provide adequate Class E airspace for IFR operations at Klamath Falls when the control tower is closed.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class D and Class E airspace areas designated as surface areas are published respectively in Paragraph 5000 and in Paragraph 6002 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 500 General

* * * * *

ANM OR D Klamath Falls, OR [Revised]

Klamath Falls International Airport, OR
(Lat. 42°09′22″ N, long 121°43′59″ W)
That airspace extending upward from the surface to and including 6,600 feet MSL within a 5.4-mile radius of the Klamath Falls International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

ANM OR E2 Klamath Falls, OR [New]

Klamath Falls International Airport, OR
(Lat. 42°09′22″ N, long. 121°43′59″ W)
Within a 5.4-mile radius of the Klamath Falls International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on February 23, 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–6706 Filed 3–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 91N–384H and 96P–0500]

RIN 0910–AA19

Food Labeling; Nutrient Content Claims, Definition of Term: Healthy; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to May 19, 1998, the comment period for its advance notice of proposed rulemaking (ANPRM) on the use of the term "healthy." The ANPRM was published in the **Federal Register** of December 30, 1997 (62 FR 67771). The agency is taking this action in response to two requests for an extension of the comment period. This extension is intended to provide interested persons with additional time to submit comments to FDA on the ANPRM.

DATES: Written comments by May 19, 1998.

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

FOR FURTHER INFORMATION CONTACT: Virginia L. Wilkening, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5763.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 30, 1997 (62 FR 67771), FDA published an ANPRM announcing that it is considering whether to institute rulemaking to reevaluate and possibly amend certain provisions of the nutrient content claims regulations pertaining to the use of the term "healthy." In the ANPRM, FDA asked for information and data to help resolve the issues pertaining to the use of the term "healthy" that were raised by a petition submitted by ConAgra, Inc (Docket 96P–0500, CP–1). Interested persons were given until March 16, 1998, to submit comments on the ANPRM.

In the **Federal Register** of February 13, 1998 (63 FR 7279), the U.S. Department of Agriculture (USDA) published an interim final rule extending until January 1, 2000, the effective date for certain requirements pertaining to the use of "healthy" on the label or labeling of meat products. In that final rule, USDA stated that written comments about its instituting additional rulemaking should be received by May 19, 1998. FDA has received letters from trade associations requesting the agency to extend the comment period on its ANPRM until May 19, 1998, to coincide with the date for USDA's interim final rule. The requests contend that additional time is needed for both food manufacturers and other interested groups to address both FDA's and USDA's comments. They also cite the need to coordinate comments to the two documents.

FDA has decided to extend the comment period to May 19, 1998, to allow additional time for the submission of comments on the ANPRM. FDA recognizes the value in providing an extension that will allow the coordination of comments on these FDA and USDA documents. Accordingly, FDA has decided to extend the comment period to May 19, 1998, to allow additional time for the submission of comments on the ANPRM.

Interested persons may, on or before May 19, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 13, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–7056 Filed 3–13–98; 3:48 pm]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 62

[MO 045–1045; FRL–5879–9]

Approval and Promulgation of Implementation Plans and Section 111(d) Plan; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve certain portions of the State Implementation Plan (SIP) revisions

submitted by the state of Missouri to consolidate the sulfur dioxide (SO_2) rules. In addition, the EPA is proposing to rescind eight rules which are replaced by the new rule, and the EPA is proposing to approve Missouri's Clean Air Act (CAA) section 111(d) plan for sulfuric acid mist plants.

DATES: Comments on this proposed rule must be received in writing on or before April 17, 1998.

ADDRESSES: Comments may be mailed to Kim Johnson, U.S. Environmental Protection Agency, Regions VII, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Kim Johnson at (913) 551–7975.

SUPPLEMENTARY INFORMATION:

I. Background

The consolidation and revisions were made to Missouri's SO_2 rules in response to an SO_2 rule enforceability review conducted by the EPA in 1991. On March 26, 1991, the EPA sent a letter requesting that Missouri consolidate its SO_2 rules to improve enforceability. The consolidated rule was presented at a public hearing on March 28, 1996. After addressing comments from the hearing, the state adopted rule 10 CSR 10–6.260 which became effective on August 30, 1996.

On August 12, 1997, Missouri submitted a request to amend the SIP by adding the new rule 10 CSR 10–6.260, Restriction of Emission of Sulfur Compounds.

In conjunction with Missouri's request for SIP approval of 10 CSR 10–6.260, Missouri also requests rescission of eight existing rules dealing with sulfur compound emissions (10 CSR 10–2.160, 2.200, 3.100, 3.150, 4.150, 4.190, 5.110, and 5.150). These eight rules were rescinded by Missouri on March 27, 1997.

Missouri simplified the SO_2 emission requirements by consolidating all of the source-specific emission limitations, tests methods, and monitoring requirements for the different geographical areas into one rule: 10 CSR 10–6.260. The rule is a combination of plans which contain requirements that have been previously approved as protecting the SO_2 NAAQS. This new rule does not change the emission limits contained in the existing eight rules proposed for rescission, but does contains enforceable emission limits, appropriate compliance methods, and requires recordkeeping sufficient to determine compliance.

Section (4) of the proposed rule requires affected sources to comply directly with the SO_2 National Ambient Air Quality Standard (NAAQS). In general, the EPA does not directly enforce the NAAQS. Section 110 of the CAA requires states to develop plans which contain enforceable emission limitations and other such measures as required to protect the NAAQS. The adoption of NAAQS as directly enforceable requirements is a matter which is not addressed by the CAA. Consequently, the EPA will not take action on section (4); however, the EPA continues to assert that it is a state's prerogative to protect air quality using all necessary and practical means.

This rule also contains the state of Missouri's section 111(d) plan as it applies to sulfuric acid mist plant emissions. Section 111(d) of the CAA and 40 CFR part 60, subpart B, require each state to adopt and submit a plan to establish emission controls for existing sources, which would be subject to the EPA's New Source Performance Standards (NSPS) if these sources were new sources.

This action, as proposed, will not impact current source control requirements, but will make it easier for sources to determine applicable requirements and enable sources and regulatory agencies to determine more clearly the methods by which compliance is required to be demonstrated.

Because the rule revision does not change existing emission limitations, the state has not determined whether the limitations continue to be adequate to demonstrate attainment of the NAAQS. The EPA's approval would not imply that any such judgment has been made. As stated previously, the purpose of the revision is to simplify and strengthen enforceability of the regulations.

The EPA also notes that other, more stringent, SO_2 controls may also apply to sources subject to these rules. For example, SO_2 emissions from some sources may be further restricted by the NSPS or by the Acid Deposition requirements under Title IV of the CAA. Any more stringent requirements supersede these revisions for sources subject to the more stringent requirements.

II. Proposed Action

The EPA is proposing to approve, as a revision to the SIP, rule 10 CSR 10–6.260, Restriction of Emission of Sulfur Compounds, submitted by the state of Missouri on August 12, 1997, except sections (3) and (4).

The EPA is proposing to approve, under 40 CFR part 62, section 3 of rule 10 CSR 10–6.260 pursuant to section 111(d) of the CAA. The EPA is proposing no action on section 4 of rule 10 CSR 10–6.260.

The EPA is also proposing to rescind SIP rules 10 CSR 10–2.160, Restriction of Emission of Sulfur Compounds; 10 CSR 10–2.200, Restriction of Emission of Sulfur Compounds From Indirect Heating Sources; 10 CSR 10–3.100, Restriction of Emission of Sulfur Compounds; 10 CSR 10–3.150, Restriction of Emission of Sulfur Compounds From Indirect Heating Sources; 10 CSR 10–4.150, Restriction of Emissions of Sulfur Compounds; 10 CSR 10–4.190, Restriction of Emissions of Sulfur Compounds From Indirect Heating Sources; 10 CSR 10–5.110, Restriction of Emissions of Sulfur Dioxide for Uses of Fuel; and 10 CSR 10–5.150, Emission of Certain Sulfur Compounds Restricted.

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

III. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

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

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its

actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

C. Unfunded Mandates

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

The EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves 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.

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

Dated: February 20, 1998.

William Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 98–7038 Filed 3–17–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300626; FRL–5776–9]

RIN 2070–AB18

Propazine; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke the tolerances for residues of propazine in or on sorghum fodder, sorghum forage, sorghum grain, and sweet sorghum. EPA is proposing this action because the remaining registration for propazine on sorghum was canceled in 1990.

DATES: Written comments, identified by the document control number [OPP–300626], must be received on or before May 18, 1998.

ADDRESSES: By mail, submit written comments 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, deliver comments to: Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under Unit VI of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document 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 comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail, Jeff Morris, Special Review Branch (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 3rd floor, Crystal Station, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8029; e-mail: morris.jeffrey@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Propazine (2-chloro-4,6-bis (isopropylamino)-*s*-triazine) is a selective, pre-emergent herbicide used to control grassy and broadleaf weeds on sorghum. Propazine belongs to the class of herbicides known as chloro-*s*-triazines, which are currently undergoing a Special Review. Propazine, like the other chloro-*s*-triazines, is classified as a Group C, possible human carcinogen, based on studies showing induction of the same tumor type by the various triazines. Propazine also demonstrates environmental fate characteristics which raise concern for its potential to contaminate ground water and thus enter sources of drinking water.

II. Legal Authority

The Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., as amended by the Food Quality Protection Act of 1996 (FQPA), Pub. L. 104-170, authorizes the establishment of tolerances (maximum residue levels), exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods pursuant to section 408, 21 U.S.C. 346(a), as amended. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore "adulterated" under section 402(a) of the FFDCA, and hence may not legally be moved in interstate commerce (21 U.S.C. 331(a) and 342(a)). For a pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances or exemptions under the FFDCA, but also must be registered under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136a, or otherwise exempted from registration under the Act.

Under FFDCA section 408(f), if EPA determines that additional data are needed to support continuation of a tolerance, EPA may require that those data be submitted by registrants under FIFRA section 3(c)(2)(B), by producers under the Toxic Substances Control Act (TSCA) section 4, or by other persons by order after opportunity for hearing. EPA intends to use Data Call-In (DCI) procedures for pesticide registrants, and FFDCA section 408(f)(1)(C) orders for non-registrants as its primary means of obtaining data. In general, EPA does not intend to use the procedures under TSCA section 4, because such procedures generally will not be applicable to pesticides.

Section 408(f) of the FFDCA states that if EPA determines that additional data are needed to support the continuation of an existing tolerance or exemption, EPA shall issue a notice that: (1) Requests that any parties identify their interest in supporting the tolerance or exemption, (2) solicits the submission of data and information from interested parties, (3) describes the data and information needed to retain the tolerance or exemption, (4) outlines how EPA will respond to the submission of supporting data, and (5) provides time frames and deadlines for the submission of such data and information.

III. Regulatory Background

Tolerances for propazine residues in or on sweet sorghum, sorghum grain, sorghum fodder and sorghum forage, set at 0.25 ppm, were established in 1968. In 1981, Ciba-Geigy submitted a petition to revise the tolerances; the new tolerances would have included both the parent compound and two propazine metabolites, G-30033 and G-28273. In addition, the revised tolerances would have covered any secondary residues in meat, milk and eggs. The proposed tolerances were to have been set at 0.25 ppm for sorghum grain, 1 ppm for forage and fodder and 0.05 to 0.1 ppm for meat, milk and eggs.

At the same time, the International Research and Development Corporation was conducting a 2-year feeding study on rats and mice. The rat study was positive for oncogenicity and in 1983, the Agency required additional data for residue chemistry and chronic toxicity. Among the requirements were data on propazine metabolism, which was needed before EPA could act on Ciba-Geigy's tolerance petition. In 1988, EPA issued the Registration Standard setting forth all of the data requirements for maintaining the registration for propazine, including acceptable studies on chronic toxicity and additional data on storage stability, analytical methods, metabolites of concern and ground water studies. Rather than generate the required data, Ciba-Geigy requested voluntary cancellation.

Because Ciba-Geigy requested voluntary cancellation of its propazine registration, EPA viewed the 1981 tolerance petition as abandoned and did not act on the petition. Since the 1990 effective date of the voluntary cancellation, EPA has granted section 18 emergency exemptions to several states for the use of propazine on sorghum. For the 1993, 1994, 1995, 1996, and 1997 use seasons, EPA granted section 18 emergency exemptions for the use of propazine on sorghum to one or more of the following states: Colorado, Kansas, New Mexico, Oklahoma, and Texas.

IV. Current Proposal

This document proposes to revoke the following tolerances established under section 408 of FFDCA: sorghum, fodder, 0.25 ppm; sorghum, forage, 0.25 ppm; sorghum, grain, 0.25 ppm; and sorghum, sweet, 0.25 ppm.

EPA is proposing these revocations because the propazine sorghum uses have been formally deleted from all propazine registrations, and it is EPA's general practice to revoke tolerances where the associated pesticide use has been deleted from all FIFRA labels. See 40 CFR 180.32(b).

V. Effective Date

EPA proposes that these revocations become effective 30 days following publication in the **Federal Register** of a final rule revoking the tolerances. EPA is proposing this effective date because the section 18 use expired on August 1, 1997, and no use of existing stocks was authorized beyond that date.

Any sorghum commodities that are treated with propazine and that are in the channels of trade following the tolerance revocations shall be subject to FFDCA section 408(l)(5), as established by FQPA. Under this section, any propazine residue in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that: (1) The residue is present as the result of an application or use of propazine at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that propazine was applied to such food.

VI. Public Comment Procedures

EPA invites interested persons to submit written comments, information, or data in response to this proposed rule. After consideration of comments, EPA will issue a final rule. Such rule will be subject to objections. Failure to file an objection within the appointed period will constitute waiver of the right to raise in future proceedings issues resolved in the final rule.

Comments must be submitted by May 18, 1998. Comments must bear a notation indicating the docket number [OPP–300626]. Three copies of the comments should be submitted to either location listed under "ADDRESSES" at the beginning of this document.

This proposal provides 60 days for any interested person to request that a tolerance be retained. If EPA receives a comment to that effect, EPA will not revoke the tolerance, but will take steps to ensure the submission of supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f). The order would specify the data needed, the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. Thereafter, if the data are not submitted as required, EPA will take appropriate action under FIFRA or FFDCA.

VII. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number [OPP–300626] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the Virginia address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [OPP–300626]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

VIII. Regulatory Assessment Requirements

This is a proposed revocation of a tolerance established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action, i.e., a tolerance revocation for which extraordinary circumstances do not exist, from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this proposal does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require special OMB review in

accordance with Executive Order 13045, entitled Protection of Children from Environmental Health and Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency previously assessed whether the revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. The factual basis and the Agency's certification under section 605(b) for tolerance revocations was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Since no extraordinary circumstances exist as to the present revocation that would change EPA's previous analysis, the Agency is able to reference the general certification. Any comments about the Agency's determination should be submitted to EPA along with comments on the proposal, and will be addressed prior to issuing a final rule.

List of Subjects in 40 CFR Part 180

Enivornmental protection, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 4, 1998.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I, part 180 is proposed to be amended as follows:

PART 180—[AMENDED]

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

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

§ 180.243 [Removed]

2. Section 180.243 is removed.

[FR Doc. 98–6979 Filed 3–17–98; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–31, RM–9227]

Radio Broadcasting Services; Johnstown and Altamont, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Hometown Broadcasting Corp. seeking the reallotment of Channel 285A from Johnstown, NY to Altamont, NY, as the community's first local aural service, and the modification of Station WSRD's license to specify Altamont as its community of license. Channel 285A can be allotted to Altamont in compliance with the Commission's minimum distance separation requirements with a site restriction of 8 kilometers (5 miles) southwest of the community, at coordinates 42–38–07 NL; 74–04–30 WL, to accommodate petitioner's desired transmitter site. Canadian concurrence in this allotment is required since Altamont is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before April 27, 1998, and reply comments on or before May 12, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard R. Zaragoza, Jason S. Roberts, Fisher Wayland Cooper Leader & Zaragoza, L.L.P., 2001 Pennsylvania Avenue, NW, Suite 400, Washington, DC 20006 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–31, adopted February 25, 1998, and released March 6, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–7036 Filed 3–17–98; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 36

RIN 1018–AE58

Seasonal Closure of the Moose Range Meadows Public Access Easements in the Kenai National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to restrict public access and use of the public easements in the Moose Range Meadows area within the boundary of the Kenai National Wildlife Refuge (Refuge). Public access and use will be prohibited on the Service-managed easements from July 1 through August 15 annually.

This seasonal closure is necessary to prevent incompatible levels of bank degradation that occur along the easements due to intensive bank angling during the sockeye (red) salmon fishery each summer. Concentrated bank angling along the easements has led to unacceptable levels of vegetation destruction and accelerated erosion of the riverbank. Healthy riverbank habitats are important in maintaining the River's famous anadromous and resident fish populations and in meeting the primary purpose of the Refuge.

DATES: Written comments must be received by May 18, 1998.

ADDRESSES: Written comments should be addressed to Regional Director, U.S. Fish and Wildlife Service, ATTN: Bob Stevens, 1011 E. Tudor Road, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: Robin West, Refuge Manager, Kenai National Wildlife Refuge, telephone: (907) 262–7021; or Bob Stevens, Public Involvement Specialist, telephone: (907) 786–3499.

SUPPLEMENTARY INFORMATION:

Background

The Service manages two public use easements on the banks of the Kenai River within lands conveyed to the Salamatof Native Association, Inc. The easements were reserved under terms of the August 17, 1979, stipulated settlement agreement between the United States, Cook Inlet Region Inc., and Salamatof Native Association Inc. The subject easements were reserved "* * * for the public at large to walk upon or along such banks, to fish from such banks or to launch or beach a boat upon such banks * * *" In addition, two access easements were also reserved from existing roadways to the river bank easements under the same agreement. Use of the two access easements was limited to foot travel or wheelchairs.

The level of foot traffic and use on the river bank easements has increased dramatically since the mid-1980's. The development and growth of the sockeye salmon sport fishery is the principal activity which has led to this high level of public use. In recent years, use has grown to the point where impacts to the vegetated banks of the Kenai River are readily apparent.

Discussions and meetings among Service staff, landowners, users, and other State and Federal managing agencies on how to deal with increasing use of the easements have been ongoing since the late 1980's. In 1995, the Kenai National Wildlife Refuge Manager (Refuge Manager) issued an emergency closure of portions of the public access easements pursuant to the authorities granted in 50 CFR 36.42. In issuing the emergency closure, the Refuge Manager determined that the human-caused bank degradation occurring as a result of the intensive bank angling effort was incompatible with the Refuge's purpose to, "* * * conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, moose, bears, mountain goats, Dall sheep, wolves and other furbearers, salmonids and other fish, waterfowl and other migratory and nonmigratory birds", [Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. 96–487, 94 Stat. 2371, 2391, Section 303(4)(B)(i)]. By regulation, this emergency action was limited to 30 days in duration.

Following the closure in 1995, the Refuge Manager prepared an environmental assessment (EA), with full public involvement, to analyze the management alternatives for the Moose Range Meadows access easements (copies of the EA may be obtained from the Refuge Manager). Through the EA process, the Service selected a management alternative that would permanently close the easements on a seasonal basis. A temporary closure during the peak use season of 1996 was instituted pursuant to 50 CFR 36.42 as an interim management measure. This rulemaking action is a necessary part of implementing the preferred alternative to make permanent the seasonal use closure.

The seasonal closure will be in effect on the 25-foot wide streamside easements on both banks of the Kenai River, and on the 25-foot wide access easements running from Funny River Road and Keystone Drive to the downstream ends of the stream side easements on the south and north banks of the River, respectively. Approximately three miles of stream side easements (two miles on the north bank and one mile on the south bank) and an additional one mile of access easements would be affected by this closure. Lands affected by this action are contained within T. 4 N.; R. 10 W.; Sections 1, 2, and 3; Seward Meridian. Maps of the affected area are available from the Refuge Manager.

Statutory Authority

The Refuge Recreation Act of 1962 (16 U.S.C. 460k–k–4) authorizes the Secretary to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the area was established.

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966 (16 U.S.C. 668 dd–ee) as amended, authorizes the Secretary under such regulations as he/she may prescribe to permit the use of any area within the National Wildlife Refuge System for any purpose whenever he/she determines that such uses are compatible with the major purposes for which such areas were established.

The National Wildlife Refuge System Improvement Act (NWRSIA) of 1997 (Pub. L. 105–57) amends and builds upon the NWRSAA in a manner that provides a strong and singular wildlife conservation mission for the Refuge System; it includes a requirement:

- To maintain the biological integrity, diversity and environmental health of the System;
- That no refuge use may be allowed unless it is first determined to be compatible; and
- That wildlife-dependent recreational uses (including hunting, fishing, wildlife observation and photography, and environmental education and interpretation), when determined to be compatible, will receive priority consideration over other public uses in refuge planning and management.

The NWRSIA serves to ensure that the Refuge System is effectively managed as a national system of lands, waters and interests for the protection and conservation of our nation's wildlife resources; however, if any conflict arises between any provision of NWRSIA and any provision of the ANILCA, then the provision in the ANILCA shall prevail.

Section 304 of ANILCA requires the Secretary to impose such terms and conditions as may be necessary and appropriate to ensure that any activities carried out on a national wildlife refuge in Alaska under any authority are compatible with the purposes of the Refuge.

The RRA, NWRSAA and NWRSIA and ANILCA authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

This rule is being proposed to manage public use of Service managed easements in a manner that is compatible with Refuge purposes as defined in section 303(4)(B) of ANILCA. The Service further determined that this action is in accordance with the provisions of all applicable laws, is consistent with principles of sound fish and wildlife management, helps implement Executive Orders 12996 (Management and Public Use of the National Wildlife Refuge System) and 12962 (Recreational Fisheries) and is otherwise in the public interest by regulating recreational opportunities at national wildlife refuges. Sufficient funds will be available within the refuge budgets to operate the hunting and sport fishing programs.

Request for Comments

A public hearing on this proposed rule was advertised in Alaska and held on March 19, 1997, at the Kenai Peninsula Borough building in Soldotna, Alaska. Department of Interior policy is, wherever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. A 60-day comment period is specified in

order to both facilitate public input and move forward to protect important refuge resources. Accordingly, interested persons may submit written comments concerning this proposed rule to the persons listed above under the heading **ADDRESSES**. All substantive comments will be reviewed and considered.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq., 5 CFR Part 1320, Pub. L. 04–13)

These proposed regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Executive Order 12866

The document is not a significant rule subject to Office of Management and Budget review under Executive order 12866.

Regulatory Flexibility Act determination (5 U.S.C. 601 et seq.)

This rulemaking will not have a significant economic impact on a substantial number of small entities by decreasing visitation and expenditures in the surrounding area of Kenai NWR. This is not a fishing closure and the same number of anglers will continue to fish the Kenai River. They will simply access the river in a different location.

Since the first emergency closure in 1995 the public use has continued to increase. Many of these people are local or own summer homes along the river. They will continue to pay for fishing licenses, magazines, membership dues, contributions, land leasing, ownership, stamps, tags, permits and tackle.

Economic impacts of refuge fishing programs on local communities are calculated from average expenditures in the "1996 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation". In 1996, 35.2 million U.S. residents 16 years old and older enjoyed a variety of fishing opportunities throughout the United States. Anglers fished 626 million days and took 507 million fishing trips. They spent almost $38 billion on fishing-related expenses during the year. Among the 29.7 million freshwater anglers, including those who fished in the Great Lakes, but not Alaska, 515 million days were spent and 420 million trips were taken freshwater fishing. Freshwater anglers spent $24.5 billion on freshwater fishing trips and equipment.

Saltwater fishing attracted 9.4 million anglers who enjoyed 87 million trips on 103 million days. They spent $8.1 billion on their trips and equipment. Trip-related expenditures for food, lodging, and transportation were $15.4 billion; equipment expenditures amounted to $19.2 billion; other expenditures such as those for magazines, membership dues, contributions, land leasing, ownership, licenses, stamps, tags, and permits accounted for $3.2 billion, or 19.2 percent of all expenditures. Overall, anglers spent an average of $41 per day in the lower 48 states and projecting a 25 percent cost of living increase for Alaska, spent an average of $51 per day in Alaska.

Five hundred angler-days, based on past creel surveys in the proposed closure areas, will continue to have the same economic impact ($51./angler-day) on local economies because these anglers that used the closure area will continue to purchase supplies, food or lodging in the area of the refuge, during the time of the closure resulting in a continuation of $25,500 to the local economy.

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities such as businesses, organizations and governmental jurisdictions in the area under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 et seq., Pub. L. 104–4, E.O. 12875)

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

Civil Justice Reform (E.O. 12988)

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

National Environmental Policy Act (42 U.S.C. 4321 et seq., 40 CFR Part 1500, 516 DM)

The Service complied with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) by completing an environmental assessment following the emergency fishing closure in 1995. On May 9, 1996, a Decision Notice and Finding of No Significant Impact was signed. Copies of the EA may be obtained from the Kenai National Wildlife Refuge, P.O. Box 2139, Soldotna, Alaska 99669; telephone: (907) 262–7021. No further documentation is required by the National Environmental Policy Act (42 U.S.C. 4321–4347).

Section 7 Consultation (16 U.S.C. 1531 et seq., 50 CFR 402)

The Service reviewed the opening package documents for the proposed seasonal closure of the Moose Range Meadows public access easements in the Kenai National Wildlife Refuge with regards to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543). There are no listed or candidate species present in this area of the refuge. The Service finds the action as presented will not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species.

Intergovernmental Review of Federal Programs (E.O. 12372, 43 CFR Part 9, and the Intergovernmental Cooperation Act of 1968)

The Service reviewed this rule under E.O. 12372 and accommodated the recommendations of State and local governments concerning Federal programs affecting their jurisdictions.

Primary Author

Mark Chase, Deputy Refuge Manager of the Kenai National Wildlife Refuge, is the primary author of this proposed rulemaking document.

List of Subjects in 50 CFR Part 36

Alaska, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

Accordingly, the Service proposes to amend part 36 of chapter I of title 50 Code of Federal Regulations as follows:

PART 36—[AMENDED]

1. The authority citation for Part 36 is revised to read as follows:

Authority: 16 U.S.C. 460(k) *et seq.*, 668dd *et seq.*, 742(a) *et seq.*, 3101 *et seq.*; and 44 U.S.C. 3501 *et seq.*

2. Amend § 36.39 by adding paragraph (i)(7)(ix) to read as follows:

§ 36.39 Public Use.

* * * * *

(i) * * *

(7) * * *

(ix) From July 1 to August 15, and annually thereafter, the public may not use or access any portion of the 25-foot wide public easements along both banks of the Kenai River within the Moose Range Meadows area; or along the Homer Electric Association Right-of-Way from Funny River Road and Keystone Drive to the downstream limits of the streamside easements. The

Kenai Refuge Manager has a map available for anglers and the general public to locate the above closures by referring to Sections 1, 2, and 3 of Township 4 North, Range 10 West, Seward Meridian.

* * * * *

Dated: March 2, 1998.

Donald J. Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–6915 Filed 3–17–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 679

[Docket No. 971015247–8061–02; I.D. 091597D]

RIN 0648–AK19

Fisheries in the Exclusive Economic Zone Off Alaska; Withdrawal of a Proposed Rule to Modify Individual Fishing Quota Survivorship Transfer Provisions

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

ACTION: Proposed Rule; withdrawal.

SUMMARY: NMFS withdraws a proposed regulatory amendment to the Individual Fishing Quota (IFQ) Program for fixed gear Pacific halibut and sablefish fisheries in and off of Alaska that was published in the **Federal Register** on November 6, 1997 (62 FR 60060). The proposed regulatory change would have modified the IFQ Program's survivorship transfer provisions in a manner that would be inconsistent with the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). This action is necessary to withdraw the proposed rule, and is intended to preclude implementation of regulations that NMFS has determined to be inconsistent with provisions of the FMPs.

DATES: This proposed rule is withdrawn on March 18, 1998.

FOR FURTHER INFORMATION CONTACT: James Hale, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The fixed gear halibut and sablefish fisheries are managed by the IFQ Program, a limited access system for fixed gear Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) fisheries in and off of Alaska. Under authority of the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act of 1982, NMFS implemented the IFQ Program in 1995, on the recommendation of the North Pacific Fishery Management Council (Council), to reduce excessive fishing capacity in the fixed gear Pacific halibut and sablefish fisheries, while maintaining the social and economic character of these fisheries and the Alaskan coastal communities where many of these fishermen are based.

Various limitations and restrictions govern the use and transfer of QS and IFQ. To harvest an IFQ allocation of halibut or sablefish species, the holder of QS from which the IFQ derives must qualify as an initial recipient of QS or as a crew member with at least 150 days experience in commercial harvest operations. Moreover, all leasing of IFQ in QS categories B, C, or D is prohibited. However, the FMPs provide for emergency transfer of IFQ. Under the authority of these emergency transfer provisions, a final rule published in the *Federal Register* on August 9, 1996 (61 FR 41523), granted surviving spouses of deceased QS holders emergency privileges allowing them to lease the total IFQ resulting from the deceased QS holder's QS for a period of 3 years following the QS holder's death. A surviving spouse might not otherwise be eligible to use or lease the deceased QS holder's IFQ (1) because of the 150-day crew members requirement and (2) unless or until a court determines the spouse to be the rightful beneficiary of QS. The emergency upon which such transfer privileges are predicated and, hence, authorized by the FMPs, is the temporary indisposition of QS while the deceased QS holder's estate remains in probate. NMFS implemented the surviving spouse transfer provisions expressly to allow a spouse to gain some pecuniary benefit from a deceased QS holder's fishing business pending the final disposition of the QS. Such privileges are temporary; once a deceased QS holder's estate is probated and an heir to the QS determined, that heir is free to transfer the QS to an individual eligible to fish an IFQ allocation of halibut or sablefish.

In June 1997, the Council recommended extending the surviving spouse transfer privileges to heirs. For the benefit of such an action to take effect, a legal determination of who would be the heir would first have to be made. Implementation of this proposed action would not extend the benefit of the existing surviving spouse transfer privileges to other surviving family members in addition to or in the absence of a spouse. Rather, it would nullify the benefit of the existing rule, which is to allow a surviving spouse to lease the deceased QS holder's IFQ for up to 3 years between the date of the QS holder's death and the time when the legal beneficiary of the QS may transfer the QS to an eligible individual.

Moreover, this proposed action is inconsistent with the FMPs. The proposed action would have effect only after the conclusion of the emergency for which the surviving spouse transfer privilege provides the often time-consuming legal process necessary to determine an heir. Because no emergency exists that would authorize the extension of temporary transfer privileges to heirs, this action is inconsistent with the FMPs and is hereby withdrawn. NMFS also withdraws the proposed rule amending survivorship transfer provisions for halibut QS and IFQ. Although the halibut IFQ fishery is not regulated pursuant to the FMPs, NMFS withdraws the amendment to transfer provisions for this fishery, as well, in order to allow the Council to reconsider this action and to maintain consistency in transfer provisions in these closely related IFQ fisheries.

Classification

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

Dated: March 12, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–7041 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 63, No. 52
Wednesday, March 18, 1998

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

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Availability and Intent To Grant of Co-Exclusive Patent Licenses

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that the U.S. Patent Application Serial No. 08/974,709, "Composition and Method for the Control of Parasitic Mites in Honeybees," filed on October 19, 1997, is available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant two co-exclusive licenses to the following companies: Betterbee, Inc., of Greenwich, New York and Dadant & Sons, Inc., of Hamilton, Illinois.

DATES: Comments must be received on or before May 18, 1998.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 10300 Baltimore Boulevard, Room 401, Building 005, BARC–W, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: Willard J. Phelps, of the Office of Technology Transfer at the Beltsville address given above; telephone: 301/504–6532.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as said companies have submitted a complete and sufficient applications for a license, promising therein to bring the benefits of said invention to the U.S. public. The prospective co-exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective co-exclusive licenses may be granted unless, within ninety (90) calendar days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 98–6925 Filed 3–17–98; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Availability and Intent To Grant of Exclusive Patent License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Cook Industrial Electric Co., Inc., of Cordele, Georgia, an exclusive license to Serial No. 08/915,687, filed on October 21, 1997, entitled "Automatic Sampling Apparatus for the Farmer Stock Peanut Pneumatic Sampler."

DATES: Comments must be received on or before May 18, 1998.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 10300 Baltimore Boulevard, Room 401, Building 005, BARC–W, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: Willard J. Phelps, of the Office of Technology Transfer at the Beltsville address given above; telephone: 301/504–6532.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Cook Industrial Electric Co., Inc., has submitted a complete and sufficient application for a license, promising therein to bring the benefits of said invention to the U.S. public. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) calendar days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 98–6924 Filed 3–17–98; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–010–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection that is used to evaluate the plant pest risk posed by the introduction of certain genetically engineered organisms and products.

DATES: Comments on this notice must be received by May 18, 1998 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 98–010–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket No. 98–010–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call

ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: For information regarding regulations for the introduction of genetically engineered organisms and products which are plant pests or which there is reason to believe are plant pests, contact Arnold Foudin, Assistant Director, Scientific Services, PPQ, APHIS, 4700 River Road, Unit 146, Riverdale, MD 20737–1236, (301) 734–7612. For copies of more detailed information on the information collection, contact Gregg Ramsey, APHIS' Information Collection Coordinator, at (301) 734–5682.

SUPPLEMENTARY INFORMATION:

Title: Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe are Plant Pests.

OMB Number: 0579–0085.

Expiration Date of Approval: September 30, 1998.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is responsible for, among other things, preventing the introduction or dissemination of plant pests into or through the United States.

As part of that responsibility, APHIS regulates the introduction (importation, interstate movement, and release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests.

In administering the regulations, APHIS collects certain information through its permitting and notification processes. That information is collected to enable APHIS to evaluate the plant pest risk posed by the introduction of certain genetically engineered organisms and products.

The information we seek with our notification and permit process includes, among other things, a complete description of the organism or product, the safeguards that will be used in preventing escape, the destination or field test locations, and field test results that describe any unusual or harmful occurrences.

Without the information we obtain through our notification and permit application process, we would be unable to evaluate the plant pest risk posed by the introduction of certain genetically engineered organisms and products.

We are asking the Office of Management and Budget (OMB) to approve the continued use of these information collection activities.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning this information collection activity. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.8434 hours per response.

Respondents: U.S. importers and shippers of genetically engineered organisms and products; agricultural companies that develop or test genetically engineered organisms or products; and members of the publicly-funded research community.

Estimated annual number of respondents: 150.

Estimated annual number of responses per respondent: 33.

Estimated annual number of responses: 4,950.

Estimated total annual burden on respondents: 4,175 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 11th day of March 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–6922 Filed 3–17–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–019–1]

Availability of Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Assistant Director, Scientific Services, PPQ, APHIS, Suite 5B05, 4700 River Road, Unit 147, Riverdale, MD 20737–1237; (301) 734–7612. For a copy of the environmental assessment and finding of no significant impact, contact Ms. Linda Lightle at (301) 734–8231; e-mail: llightle@aphis.usda.gov. Please refer to the permit number listed below when ordering the document.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained or a

notification acknowledged before a regulated article may be introduced into the United States. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, and release into the environment of a regulated article.

In the course of reviewing the permit application, the Animal and Plant Health Inspection Service (APHIS) assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued a permit for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessment and finding of no significant impact, which is based on data submitted by the applicant and on a review of other relevant literature, provides the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field test.

An environmental assessment and finding of no significant impact has been prepared by APHIS relative to the issuance of a permit to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
97–301–01r	ProdiGene, Inc	1–30–98	Tomato plants genetically engineered to express a novel protein of pharmaceutical interest.	Texas.

The environmental assessment and finding of no significant impact has been prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 11th day of March 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–6923 Filed 3–17–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Blue Mountains Natural Resources Institute, Board of Directors, Pacific Northwest Research Station, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Blue Mountains Natural Resources Institute (BMNRI) Board of Directors will meet on April 24, 1998, at Agriculture Service Center Conference Room, 10507 N. McAlister Road, La Grande, Oregon. The meeting will begin at 9 a.m. and continue until 3:30 p.m. Agenda items to be covered will include: (1) Program status; (2) research results of specific projects; (3) outreach activities; (4) report on Initiatives; (5) presentations by guest speakers; (6) forum for issues discussion; (7) public comments. All BMNRI Board Meetings are open to the public. Interested citizens are encouraged to attend. Members of the public who wish to make a brief oral presentation at the meeting should contact Larry Hartmann, BMNRI, 1401 Gekeler Lane, La Grande, Oregon 97850, 541–962–6537, no later than 5:00 p.m. April 17, 1998, to have time reserved on the agenda.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Larry Hartmann, Manager, BMNRI, 1401 Gekeler Lane, La Grande, Oregon 97850, 541–962–6537.

Dated: March 10, 1998.

Lawrence A. Hartmann,

Manager.

[FR Doc. 98–7021 Filed 3–17–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Committee of Scientists Meetings

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Committee of Scientists is holding its next two meetings on March 31–April 1, 1998, in Boston, Massachusetts and on April 14–15, 1998, in Albuquerque, New Mexico. The purpose of the Boston meeting is to discuss planning issues concerning the National Forests in the Eastern Region (Connecticut, Delaware, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, West Virginia, and Wisconsin). The purpose of the Albuquerque meeting is to discuss planning issues concerning the Southwestern Region (New Mexico and Arizona). The Committee will meet with representatives from federal, state, and local organizations; will share information and ideas about Committee members' assignments; will continue discussions on the scientific principles underlying land and resource management; and will conduct any other Committee business that may arise. The meetings are open to the public and opportunities for the public to address the Committee will be provided.

DATES: The Boston meeting will be held March 31–April 1, 1998, and the Albuquerque meeting will be held April 14–15, 1998.

ADDRESSES: The Boston meeting will be held at the Holiday Inn Select, Government Center, 5 Blossom Street at Cambridge Street, Boston, Massachusetts. The Albuquerque meeting will be held at the Sheraton Hotel Old Town, 800 Rio Grande NW, Albuquerque, New Mexico.

Written comments on improving land and resource management planning may be sent to the Committee of Scientists, P.O. Box 2140, Corvallis, OR 97339. Also, the Committee may be accessed via the Internet at www.cof.orst.edu./org/scicomm/.

FOR FURTHER INFORMATION CONTACT: Bob Cunningham, Designated Federal Official to the Committee of Scientists, telephone: 202–205–2494.

SUPPLEMENTARY INFORMATION: The Boston meeting to discuss planning issues concerning the National Forests in the Eastern Region will begin at 9 a.m. and end at 7 p.m. on March 31. On April 1, the meeting will begin at 8 a.m. and end at 4 p.m. Citizens may address the Committee on March 31, beginning at 4 p.m., to present ideas on how to improve National Forest System land and resource management planning.

The Albuquerque meeting to discuss planning issues concerning the Southwestern Region will begin at 9

a.m. and end at 7 p.m. on April 14. On April 15, the meeting will begin at 8 a.m. and end at 4 p.m. Citizens may address the Committee on April 14, beginning at 4 p.m., to present ideas on how to improve National Forest System land and resource management planning.

Citizens who wish to speak at either meeting must register at that meeting before 5 p.m. Each speaker will be limited to a maximum of 5 minutes. Persons may also submit written suggestions to the Committee at either meeting or may mail suggestions to the addresses listed under the **ADDRESSES** heading.

The Committee of Scientists is chartered to provide scientific and technical advice to the Secretary of Agriculture and the Chief of the Forest Service on improvements that can be made to the National Forest System land and resource management planning process (62 FR 43691; August 15, 1997). Notice of the names of the appointed Committee members was published December 16, 1997 (62 FR 65795). Agendas and locations for future meetings will be published as separate notices in the **Federal Register**.

Dated: March 11, 1998.

Gloria Manning,

Acting Deputy Chief for National Forest System.

[FR Doc. 98–6971 Filed 3–17–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Intent To Request Approval of an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request approval for a new information collection, the 1998 Census of Horticultural Specialties.

DATES: Comments on this notice must be received by May 22, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117, South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: 1998 Census of Horticultural Specialties.

Type of Request: The 1998 Census of Horticultural Specialties, authorized by the Census of Agriculture Act of 1997 (Pub. L. No. 105–113), will include all operations in each State that produced and sold $10,000 or more of horticultural specialty crops during 1998. The horticulture census will provide data on the number of farms, production and sales by type of plant, area in production, selected production expenses, hired workers, and value of land and equipment. Census data are used by the growers, their representatives, the government, and many other groups of people concerned with the horticulture industry. The census will provide detailed data on the production of specialty horticultural crops for each State. Results from the census will be used to evaluate new programs, disburse Federal funds, analyze market trends, and measure performance across States. The horticulture census will provide the only source of dependable, comparable data by State. The National Agricultural Statistics Service will use the information collected only for statistical purposes and will publish the data only as tabulated totals.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 66 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 36,000.

Estimated Total Annual Burden on Respondents: 39,600 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments: 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4162, South Building, Washington, D.C. 20250–2000. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C., March 3, 1998.

Donald M. Bay,

Administrator, National Agricultural Statistics Service.

[FR Doc. 98–6941 Filed 3–17–98; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Intent To Request Approval of an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request approval for a new information collection, the 1998 Farm and Ranch Irrigation Survey.

DATES: Comments on this notice must be received by May 22, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: 1998 Farm and Ranch Irrigation Survey.

Type of Request: The 1998 Farm and Ranch Irrigation Survey, authorized by the Census of Agriculture Act of 1997 (Pub. L. No. 105–113), will include a probability sample of farms reporting irrigation in the 1997 Census of Agriculture. This irrigation survey will provide detailed data relating to on-farm irrigation practices including acres irrigated by category of land use, acres and yields of irrigated and non-irrigated

crops, quantity of water distribution systems, and number of irrigation wells and pumps. Also included will be 1998 irrigation expenditures for maintenance and repair of irrigation equipment and facilities; purchase of energy for on-farm pumping of irrigation water; investment in irrigation equipment, facilities, and land improvement; and cost of water received from off-farm water supplies. Census data are used by the farmers, their representatives, the government, and many other groups of people concerned with the irrigation industry. The survey will provide a comprehensive inventory of farm irrigation practices. Results from the survey will be used to evaluate new programs, disburse Federal funds, analyze market trends, and measure performance across States. The irrigation survey will provide the only source of dependable, comparable data by State. The National Agricultural Statistics Service will use the information collected only for statistical purposes and will publish the data only as tabulated totals.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 45 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 25,000.

Estimated Total Annual Burden on Respondents: 18,750 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments: 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4162 South Building, Washington, D.C. 20250–2000. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C., March 3, 1998.

Donald M. Bay,

Administrator, National Agricultural Statistics Service.

[FR Doc. 98–6942 Filed 3–17–98; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes in the NRCS National Handbook of Conservation Practices for Review and Comment

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of proposed changes in the NRCS National Handbook of Conservation Practices for review and comment.

SUMMARY: Notice is hereby given of the intention of NRCS to issue a series of new or revised conservation practice standards in its National Handbook of Conservation Practices. These standards include "Early Successional Habitat Development/Management," "Restoration and Management of Declining Habitats," "Riparian Herbaceous Cover," "Shallow Water Management for Wildlife," "Wildlife Upland Habitat Management," "Wildlife Watering Facility", "Wetland Restoration," "Wetland Enhancement," "Wetland Creation," "Constructed Wetland," "Wildlife Wetland Habitat Management," and "Alley Cropping." NRCS State Conservationists who choose to adopt these practices for use within their State will incorporate them into Section IV of their Field Office Technical Guide (FOTG). These practices may be used in conservation systems that treat highly erodible land or on land determined to be wetland.

EFFECTIVE DATES: Comments must be received by May 18, 1998. This series of new or revised conservation practice standards will be adopted after the close of the 60-day comment period.

FOR FURTHER INFORMATION CONTACT: Single copies of these standards are available from Ecological Sciences Division, NRCS, Washington, D.C. Submit individual inquiries in writing to Mike W. Anderson, National Wildlife Ecologist, Natural Resources Conservation Service, P.O. Box 2890, Room 6154–S, Washington, D.C. 20013–2890.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires the NRCS to make available for public review and comment proposed revisions to conservation practice standards used to carry out the highly erodible land and wetland provisions of the law. For the next 60 days the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

Signed in Washington, D.C., on March 12, 1998.

Pearlie S. Reed,

Chief, Natural Resources Conservation Service, Washington, D.C.

[FR Doc. 98–6926 Filed 3–17–98; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Municipal Interest Rates for the Second Quarter of 1998

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of municipal interest rates on advances from insured electric loans for the second quarter of 1998.

SUMMARY: The Rural Utilities Service hereby announces the interest rates for advances on municipal rate loans with interest rate terms beginning during the second calendar quarter of 1998.

DATES: These interest rates are effective for interest rate terms that commence during the period beginning April 1, 1998, and ending June 30, 1998.

FOR FURTHER INFORMATION CONTACT: Carolyn Dotson, Loan Funds Control Assistant, U.S. Department of Agriculture, Rural Utilities Service, Room 0227–S, Stop 1524, 1400 Independence Avenue, SW, Washington, DC 20250–1500. Telephone: 202–720–1928. FAX: 202–690–2268. E-mail: CDotson@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The Rural Utilities Service (RUS) hereby announces the interest rates on advances made during the second calendar quarter of 1998 for municipal rate electric loans. RUS regulations at 7 CFR 1714.4 state that each advance of funds on a municipal rate loan shall bear interest at a single rate for each interest rate term. Pursuant to 7 CFR 1714.5, the interest rates on these advances are based on indexes published in the "Bond Buyer" for the four weeks prior to the second Friday of

the last month before the beginning of the quarter. The rate for interest rate terms of 20 years or longer is the average of the 20 year rates published in the Bond Buyer in the four weeks specified in 7 CFR 1714.5(d). The rate for terms of less than 20 years is the average of the rates published in the Bond Buyer for the same four weeks in the table of "Municipal Market Data—General Obligation Yields" or the successor to this table. No interest rate may exceed the interest rate for Water and Waste Disposal loans.

The table of Municipal Market Data includes only rates for securities maturing in 1998 and at 5 year intervals thereafter. The rates published by RUS reflect the average rates for the years shown in the Municipal Market Data table. Rates for interest rate terms ending in intervening years are a linear interpolation based on the average of the rates published in the Bond Buyer. All rates are adjusted to the nearest one eighth of one percent (0.125 percent) as required under 7 CFR 1714.5(a). The market interest rate on Water and Waste Disposal loans for this quarter is 5.125 percent.

In accordance with 7 CFR 1714.5, the interest rates are established as shown in the following table for all interest rate terms that begin at any time during the second calendar quarter of 1998.

Interest rate term ends in (year)	RUS rate (0.000 percent)
2019 or later	5.125
2018	5.125
2017	5.125
2016	5.000
2015	5.000
2014	5.000
2013	4.875
2012	4.875
2011	4.750
2010	4.625
2009	4.500
2008	4.500
2007	4.375
2006	4.375
2005	4.250
2004	4.125
2003	4.125
2002	4.000
2001	3.875
2000	3.750
1999	3.625

Dated: March 12, 1998.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 98–7020 Filed 3–17–98; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

Estimates of the Voting Age Population for 1997

Under the requirements of the 1976 amendment to the Federal Election Campaign Act, Title 2, United States Code, Section 441a(e), I hereby give notice that the estimates of the voting age population for July 1, 1997, for each state and the District of Columbia are as shown in the following table.

I have certified these counts to the Federal Election Commission.

Dated: March 11, 1998.

William M. Daly,

Secretary of Commerce.

ESTIMATE OF THE POPULATION OF VOTING AGE FOR EACH STATE AND DISTRICT OF COLUMBIA: JULY 1, 1997

[In thousands]

Area	Population 18 and over
United States	198,108
Alabama	3,247
Alaska	421
Arizona	3,277
Arkansas	1,860
California	23,317
Colorado	2,877
Connecticut	2,478
Delaware	554
District of Columbia	422
Florida	11,183
Georgia	5,498
Hawaii	884
Idaho	859
Illinois	8,722
Indiana	4,367
Iowa	2,127
Kansas	1,907
Kentucky	2,947
Louisiana	3,161
Maine	945
Maryland	3,826
Massachusetts	4,666
Michigan	7,269
Minnesota	3,435
Mississippi	1,978
Missouri	3,996
Montana	649
Nebraska	1,212
Nevada	1,234
New Hampshire	877
New Jersey	6,066
New Mexico	1,230
New York	13,577
North Carolina	5,552
North Dakota	476
Ohio	8,348
Oklahoma	2,439
Oregon	2,433
Pennsylvania	9,156
Rhode Island	754
South Carolina	2,805
South Dakota	541
Tennessee	4,043
Texas	13,862
Utah	1,371
Vermont	443
Virginia	5,090
Washington	4,156
West Virginia	1,404
Wisconsin	3,823
Wyoming	348

Source: Population Estimates Program, Population Division, Bureau of the Census, Washington, DC 20233, March 1998.

For a description of methodology see Current Population Reports, P25–1127.

[FR Doc. 98–7077 Filed 3–16–98; 10:05 am]

BILLING CODE 3510–07–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Renewal of Census Advisory Committees on the African American Population, American Indian and Alaska Native Populations, Asian and Pacific Islander Populations, and Hispanic Population

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of renewal.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and after concurrence of the General Services Administration, the Secretary of Commerce has determined that the renewal of the Census Advisory Committees on the African American Population, American Indian and Alaska Native Populations, Asian and Pacific Islander Populations, and Hispanic Population is in the public interest in connection with the performance of duties imposed on the Department by law.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: Maxine Anderson-Brown, Committee Liaison Officer, Bureau of the Census, Washington, DC 20233, telephone 301–457–2308, TDD 301–457–2540.

SUPPLEMENTARY INFORMATION: These Committees will provide an organized and continuing channel of communication between the communities they represent and the

Bureau of the Census on its efforts to reduce the differential in the totals for all population groups during Census 2000 and on ways census data can be disseminated to maximize their usefulness to these communities and other users.

The Committees will draw on the experience of their members with the 1990 census process and procedures, results of evaluations and research studies, and test censuses, and also will draw on the expertise and insight of their members to provide advice and recommendations on data collection, processing, promotional, and evaluation activities during the implementation phases of Census 2000. The Committees will provide advice regarding the tabulation plans for race and ethnic data.

These Committees will function solely as an advisory body with respect to the matters described above and will comply fully with the provisions of the Federal Advisory Committee Act. Each Committee shall consist of nine members to be appointed by and serve at the discretion of the Secretary of Commerce.

The Committees shall report to the Director, Bureau of the Census. The Designated Federal Official for the Advisory Committees shall be the Principal Associate Director for Programs at the Bureau of the Census.

The Department of Commerce will file copies of the Committees' renewal charters with appropriate committees in Congress.

Dated: March 11, 1998.

James F. Holmes,

Acting Director, Bureau of the Census.

[FR Doc. 98–6995 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–07–U

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 962]

Grant of Authority for Subzone Status: Shell Oil Company (Oil Refinery); Mobile County, Alabama

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the City of Mobile, Alabama, grantee of Foreign-Trade Zone 82, for authority to establish special-purpose subzone status at the oil refinery complex of Shell Oil Company, located in Mobile County, Alabama, was filed by the Board on April 16, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 33–97, 62 FR 24080, 5/2/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 82F) at the oil refinery complex of Shell Oil Company, located in Mobile County, Alabama, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR § 146.42) may be elected on refinery inputs covered under HTSUS Subheadings # 2709.00.1000—# 2710.00.1050, # 2710.00.2500, and # 2710.00.45 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (examiners report, Appendix C);

—Products for export; and,

—Products eligible for entry under HTSUS #9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 6th day of March 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–7016 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 959]

Grant of Authority for Subzone Status; Chevron U.S.A. Inc. (Oil Refinery); El Segundo, California

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Los Angeles Board of Harbor Commissioners, grantee of Foreign-Trade Zone 202, for authority to establish special-purpose subzone status at the oil refinery complex of Chevron U.S.A. Inc., located in El Segundo, California, was filed by the Board on March 31, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 25–97, 62 FR 17581, 4/10/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 202B) at the oil refinery complex of Chevron U.S.A.

Inc., located in El Segundo, California, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000–#2710.00.1050, #2710.00.2500, and #2710.00.45 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (examiners report, Appendix C);
—Products for export; and,
—Products eligible for entry under HTSUS #9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 6th day of March 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–7013 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 960]

Grant of Authority for Subzone Status; Mobil Oil Corporation (Oil Refinery); Will County, Illinois

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Illinois International Port District, grantee of Foreign-Trade Zone 22, for authority to establish special-purpose subzone status at the oil refinery complex of Mobil Oil Corporation, located in Will County, Illinois, was filed by the Board on April 7, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 27–97, 62 FR 18739, 4/17/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 22J) at the oil refinery complex of Mobil Oil Corporation, located in Will County, Illinois, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000–#2710.00.1050, #2710.00.2500, and #2710.00.45 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (examiners report, Appendix C);
—Products for export; and,
—Products eligible for entry under HTSUS #9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 6th day of March 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–7014 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 963]

Expansion of Foreign-Trade Zone 206; Medford, Oregon Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from Jackson County, Oregon, grantee of Foreign-Trade Zone 206, for authority to expand FTZ 206 to include one additional site in Jackson County and five new sites in Josephine County, Oregon, adjacent to the Medford-Jackson County Airport which has Customs user fee airport status, was filed by the Board on January 15, 1997 (FTZ Docket 3–97, 62 FR 7750, 2/20/97);

Whereas, notice inviting public comment was given in **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 206 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 6th day of March 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–7012 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 961]

Grant of Authority for Subzone Status: Lyondell-Citgo Refining Company, Ltd. (Oil Refinery); Harris County, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Port of Houston Authority, grantee of Foreign-Trade Zone 84, for authority to establish special-purpose subzone status at the oil refinery complex of Lyondell-Citgo Refining Company, Ltd., located in Harris County, Texas, was filed by the Board on April 15, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 32–97, 62 FR 24080, 5/2/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 84P) at the oil refinery complex of Lyondell-Citgo Refining Company, Ltd., located in Harris County, Texas, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000–#2710.00.1050, #2710.00.2500, and #2710.00.45 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (examiners report, Appendix C);
—Products for export; and,
—Products eligible for entry under HTSUS #9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 6th day of March 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–7015 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–815 & A–580–816]

Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews

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

ACTION: Final results of antidumping duty administrative reviews.

SUMMARY: On September 9, 1997, the Department of Commerce ("the Department") published the preliminary results of the administrative reviews of the antidumping duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea. These reviews cover three manufacturers/exporters of the subject merchandise to the United States and the period August 1, 1995, through July 31, 1996. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: Fred Baker (Dongbu), Steve Bezirganian (POSCO), Thomas Killiam (Union), Alain Letort, or John Kugelman, AD/CVD Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone 202/482–2924 (Baker), 202/482–0162 (Bezirganian), 202/482–2704 (Killiam), 202/482–4243 (Letort), or 202/482–0649 (Kugelman), fax 202/482–1388.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 353 (April 1997). Although the Department's new regulations, codified at 19 CFR part 351 (62 FR 27296—May 19, 1997) ("*Final Rules*"), do not govern these proceedings, citations to those regulations are provided, where appropriate, to explain current departmental practice.

Background

The Department published antidumping duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea on August 19, 1993 (58 FR 44159). The Department published a notice of "Opportunity to Request Administrative Review" of the antidumping duty orders for the 1995/96 review period on August 12, 1996 (61 FR 41770). On August 30, 1996, respondents Dongbu Steel Co., Ltd. ("Dongbu") and Pohang Iron and Steel Co., Ltd. ("POSCO") requested that the Department conduct administrative reviews of the antidumping duty orders on cold-rolled and corrosion-resistant carbon steel flat products from Korea; respondent Union Steel Manufacturing Co., Ltd. ("Union") requested a review of corrosion-resistant carbon steel flat products only. On the same day, the petitioners in the original less-than-fair-value ("LTFV") investigations (AK Steel Corp., Bethlehem Steel Corporation, U.S. Steel Group—a unit of USX Corporation, Inland Steel Industries, Inc., Geneva Steel, Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, and Lukens Steel Company, collectively referred to as "petitioners") filed a similar request. We initiated these reviews on

September 13, 1996 (61 FR 48862—September 17, 1996).

On October 7, 1996, the petitioners requested, pursuant to section 751(a)(4) of the Act, that the Department determine whether antidumping duties had been absorbed by the respondents during the period of review ("POR"). Section 751(a)(4) provides for the Department, if requested, to determine, during an administrative review initiated two years or four years after publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. Section 751(a)(4) was added to the Act by the URAA.

The regulations governing these reviews do not address this provision of the Act. However, for transition orders as defined in section 751(c)(6)(C) of the Act, *i.e.*, orders in effect as of January 1, 1995, section 351.213(j)(2) of the Department's new antidumping regulations provides that the Department will make a duty-absorption determination, if requested, in any administrative review initiated in 1996 or 1998. *See* 19 CFR § 351.213(j)(2), 62 FR at 27394. As noted above, while the new regulations do not govern the instant reviews, they nevertheless serve as a statement of departmental policy. Because orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea have been in effect since 1993, they are transition orders in accordance with section 751(c)(6)(C) of the Act. As these reviews were initiated in 1996, the Department has acceded to petitioners' request that it conduct a duty-absorption inquiry.

The Act provides for a determination on duty absorption if the subject merchandise is sold in the United States through an affiliated importer. In these cases, all reviewed firms sold through importers that are "affiliated" within the meaning of section 751(a)(4) of the Act. We have determined that the following firms have dumping margins on the percentages of their U.S. sales, by quantity, indicated below:

Name of firm and class or kind of merchandise	Percentage of U.S. affiliate's sales with dumping margins
Dongbu:	
Cold-Rolled	65.34
Corrosion-Resistant	5.82
POSCO:	
Cold-Rolled	35.54
Corrosion-Resistant	14.64
Union:	
Cold-Rolled	(1)
Corrosion-Resistant	8.99

[1] No U.S. sales in POR.

We presume that the duties will be absorbed for those sales which were dumped. This presumption can be rebutted with evidence that the unaffiliated purchasers in the United States will pay the ultimately assessed duty. However, there is no such evidence on the record. Under these circumstances, we find that antidumping duties have been absorbed by the above-listed firms on the percentages of U.S. sales indicated. Although we afforded interested parties the opportunity to submit evidence that unaffiliated purchasers in the United States will absorb duties, no party availed itself of this opportunity.

On September 9, 1997, the Department published in the **Federal Register** the preliminary results of the third administrative reviews of the antidumping duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea (62 FR 47423). The Department has now completed these administrative reviews in accordance with section 751 of the Act.

Scope of the Reviews

The review of "certain cold-rolled carbon steel flat products" covers cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this review is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

The review of "certain corrosion-resistant carbon steel flat products" covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc-, aluminum-, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000,

7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this review are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this review are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this review are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

These HTS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

The POR is August 1, 1995 through July 31, 1996. These reviews cover sales of certain cold-rolled and corrosion-resistant carbon steel flat products by Dongbu, Union, and POSCO.

Verification

As provided in section 782(i)(3) of the Act, we verified information provided by the respondents using standard verification procedures, including on-site inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Fair-Value Comparisons

To determine whether sales of the subject merchandise from Korea to the United States were made at less than fair value, we compared the export price ("EP") or constructed export price ("CEP") of the merchandise to the normal value ("NV"), as described in the "Export Price (or Constructed Export Price)" and "Normal Value" sections of *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Preliminary Results of Antidumping Duty Administrative Reviews*, 62 FR 47422 (September 9, 1997).

Since the publication of the preliminary review results, however, we have re-examined the facts of the record of these cases, our prior practice, and statutory definitions. As a result of our re-examination, we have concluded that treating certain transactions as indirect EP transactions is inappropriate. The Act defines the term "constructed export price" as "the price at which the subject merchandise is first sold (or agreed to be sold) *in the United States* before or after the date of importation *by or for the account of* the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d)." In contrast, "export price" is defined as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation *by the producer or exporter* of the subject merchandise *outside of the United States*." Sections 772(a)–(b) of the Act (emphasis added). In these cases, the record clearly establishes that the respondents' affiliates *in the United States* were in most instances the parties first contacted by unaffiliated U.S. customers desiring to purchase the subject merchandise and also that the sales affiliates in question signed the sales contracts and engaged in other sales support functions. These facts indicate that the subject merchandise is first sold in the *United States* by or for the account of the producer or exporter, or by the affiliated seller, and that the sales in question are therefore CEP transactions.

Factors relevant to that analysis include: (1) Whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. sales affiliate was limited to that of a processor of sales-related documentation and a communications link with the unrelated U.S. buyer. Where the facts indicate that the activities of the U.S. affiliate were ancillary to the sale (*e.g.*, arranging transportation or customs clearance, invoicing), we treated the transactions as EP sales. Where the U.S. affiliate had more than an incidental involvement in making sales (*e.g.*, soliciting sales, negotiating contracts or prices) or performed other selling functions, we treated the transactions as CEP sales. For company-specific details on the application of this methodology, please refer below to the "Analysis of Comments Received" section of this notice.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States*, 1998 WL 3626 (Fed Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value ("CV") as the basis for foreign market value when the Department finds home-market sales to be outside the "ordinary course of trade." This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ordinary course of trade to include sales below cost. *See* Section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign-market sales of merchandise identical or most similar to that sold in the United States to be outside the ordinary course of trade. Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the "Scope of the Reviews" section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire. We have implemented the Court's decision in this case, to the extent that the data on the record permitted.

For purposes of these final review results, in accordance with the Department's regulations and the questionnaire issued to the respondents at the outset of these reviews, we have used the date of the invoice to the first unaffiliated purchaser in the United States as the date of sale, except for transactions where the date of invoice

occurred after the date of shipment, in which case we used the date of shipment as the date of sale.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments and rebuttal comments from Dongbu, POSCO, and Union, exporters of the subject merchandise ("respondents"), and from petitioners. POSCO requested a public hearing, which was held on November 7, 1997.

General Comments

Comments by Petitioners

Comment 1. Petitioners argue that the Department must deduct actual antidumping ("AD") and countervailing ("CVD") duties paid by respondents' affiliated importers from the price used to establish EP or CEP.

Department's Position. We disagree with petitioners. We continue to adhere to our longstanding practice as articulated in prior segments of these proceedings, which is not to make a deduction for antidumping duties. This practice was recently upheld by the Court of International Trade ("CIT") in *AK Steel Corp., et al.* v. *United States,* CIT Slip Op. 97–160 (December 1, 1997).

Comment 2. Petitioners contend the Department's duty absorption determination in the preliminary review results is flawed for two major reasons.

First, petitioners assert that by inviting the parties to submit new factual information after verification in order to rebut its presumption that "duties will be absorbed for those sales which were dumped," the Department undermined the statutory requirement that all information used in the final review results be verified. Petitioners argue that they were placed at a distinct disadvantage by the Department's decision to allow respondents to place information on the record which could not be verified. Petitioners argue that the Department's procedure is at odds with the ruling by the Court of Appeals for the Federal Circuit ("CAFC") that "the burden of production is properly placed upon the party in control of the necessary information." *See Creswell Trading Co. v. United States,* 15 F.3d 1054, 1060 (Fed. Cir. 1994). Although petitioners recognize that their concerns are no longer an issue in these reviews, since no party submitted information pursuant to the Department's request, they urge the Department to discard this poorly conceived method and to collect all relevant duty absorption evidence at the same time as it collects information necessary to complete its dumping analysis.

Second, petitioners believe the Department's methodology has the potential to understate the extent to which antidumping duties were absorbed. The Department's methodology, they argue, can give the casual reader the mistaken impression that the total amount of duties absorbed was limited to the dumped sales included in the final antidumping duty calculated. Because the overall dumping margin is weight averaged, petitioners contend, the true level of dumping and thus of duty absorption is significantly greater than the overall margin. To remedy this problem, petitioners suggest that the Department state its duty absorption finding as the percentage of sales dumped in conjunction with the average level of dumping *for those sales* (emphasis in the original). For example, if five percent of a respondent's sales were dumped, and the overall weighted-average dumping margin on the dumped sales was 40 percent, the Department should state that the respondent absorbed duties on five percent of sales at a margin of 40 percent.

Petitioners reject the alternative methodology suggested by POSCO, which would measure duty absorption not on a sale-specific basis but rather across all sales made during the POR. Petitioners argue that POSCO's proposal to determine duty absorption by comparing the average U.S. price to the average normal value is contrary to the statute, which mandates that, in administrative reviews, dumping margins be calculated by comparing the U.S. price and normal value of each entry. Similarly, petitioners argue that POSCO's proposal to include sales with negative margins in the calculation is contrary to the Department's long-standing practice of treating such sales as zero-margin sales. Petitioners maintain that calculating duty absorption levels on anything other than a transaction-specific basis undermines the presumption that "current dumping margins calculated * * * in reviews may not be indicative of the margins that would exist in the absence of an order." Uruguay Round Agreements Act, Statement of Administrative Action ("SAA"), H.R. Doc. 103–316, Vol. I, 103rd Cong., 2nd Sess. (1994) at 885.

Respondents argue that the Department's preliminary duty absorption determination violates the letter and intent of both the statute and Article 11.1 of the Agreement on Implementation of Article VI of the General Agreements on Tariffs and Trade (1994) ("*UR Antidumping Agreement*"). It violates the statute, say respondents, because the statute recognizes that the antidumping law must be implemented in a fair manner. This is why the Department calculates dumping margins on a weighted-average basis, and measures dumping over the 12-month period in order to eliminate the effects of abnormal, outlying instances of dumping. It violates Article 11.1, assert respondents, because that article states that antidumping measures shall remain in effect only as long as and to the extent necessary to counteract injurious dumping.

Respondents maintain that the Department's current duty absorption methodology, as stated in the preliminary review results, would unlawfully make it more difficult for antidumping orders to be revoked by finding that duty absorption has occurred even in cases where the dumping margin is zero or *de minimis.* Respondents contend that the Department's present methodology implies that if a respondent, over a 12-month period, has not engaged in dumping but has one or two outlying sales which were dumped, then the Department will determine that not only has the respondent engaged in duty absorption, but at the magnitude of those one or two sales. Respondents claim that such a distorted result makes it more likely that the International Trade Commission ("ITC") will prolong the existence of the order, in violation of Article 11.1. Indeed, say respondents, one could envision a situation where the Department would revoke an order due to three consecutive years of zero or *de minimis* margins, yet recommend that the ITC not grant a "sunset" revocation because of duty absorption found under this distortive methodology.

Respondents therefore recommend that the Department base a duty absorption determination on a respondent's overall pricing policies and not on individual, isolated instances of dumping. In addition, they contend the Department should include a credit for negative margins, in fulfillment of its Article 11.1 obligations.

Department's Position. After carefully considering petitioners' and respondents' conflicting views, we have left our duty absorption methodology unchanged from the preliminary results.

Contrary to petitioners' contention that we violated the statute by requesting new factual information after verification, our regulations allow us to request factual information from the parties at any time, even after verification. Had any party chosen to submit new factual information in

response to our request in the preliminary results notice, we would have afforded the other parties an opportunity to comment in writing on such information. The issue of whether or not such information would have been verified is moot since we received no new factual information on duty absorption pursuant to our request.

We believe the approach suggested by petitioners is inappropriate because, as respondents point out, it would result in an artificially inflated duty absorption percentage and could mislead the ITC. In a hypothetical case where, out of 100 U.S. sales transactions, only one was dumped, but at a margin of 20 percent, petitioners apparently would have the Department determine that duty absorption had occurred at a rate of 20 percent on one percent of sales. We find this approach distortive and not mandated by either statute or regulation.

We also reject POSCO's suggestion that we offset sales with positive dumping margins with sales with negative dumping margins because doing so would disguise the fact that duty absorption may have occurred, thereby obfuscating our duty-absorption inquiry. In administrative reviews, negative dumping margins are systematically disregarded, because there is no basis in the antidumping law to use negative margins as an offset or a "credit" against positive margins.

Accordingly, for purposes of these final review results, we have left unchanged our duty absorption methodology.

Comment 3. Petitioners assert that in the event the Department reclassifies certain EP transactions as CEP transactions, it must ensure that these sales are reviewed in either the third or fourth administrative review, and not permit certain sales to escape review in their entirety as a result of the Department's practice of determining whether or not a sale is subject to review based on the date of sale rather than the date of entry.

Where reclassifying an EP sale as a CEP sale pushes that sale forward into the fourth administrative review, petitioners do not object. Where such reclassification, however, causes certain sales to be pushed backwards into the completed second review period, petitioners object strongly, because such sales will escape this review, which is contrary to the statutory provision that all entries be reviewed. *See* § 751(a)(2) of the Act.

Petitioners state that nothing prevents the Department from reviewing newly reclassified CEP sales even if the reported date of sale falls within the previous POR, since such transactions were not previously reviewed and will not be subject to review in the future.

Respondents retort that petitioners are requesting the Department simultaneously to administer the antidumping law in two different and mutually exclusive directions. On the one hand, they say, petitioners ask that the Department reclassify certain EP transactions as CEP transactions, yet at the same time they ask the Department to ignore its standard date-of-sale methodology with regard to those sales and revert to an EP date-of-sale methodology. Respondents affirm that this argument is internally inconsistent and unsupported by statute or regulations. If the Department (wrongfully) decides to reclassify the sales in question as CEP transactions, argue respondents, then it should use its standard date-of-sale methodology to determine whether those sales fall within the POR, even at the risk of those sales falling out of the POR.

Department's Position. We agree with petitioners. Although we have reclassified most of the respondents' U.S. sales as CEP transactions for purposes of these final review results, this change has no effect on the date of sale. As explained elsewhere in this notice (*see* the Department's Position to Comment 31, below), we have changed the date of sale for Dongbu and Union, but for reasons independent of the change from EP to CEP. There is no "EP date-of-sale methodology," as respondents claim. Where sales are classified as CEP transactions but the date of sale occurs *prior* to importation, we generally cover all *entries* during the POR; where sales are classified as CEP transactions and the date of sale occurs *after* importation, we generally cover all *sales* during the POR. In these cases the earlier of these situations applies; therefore, we have analyzed all entries during the POR, and no sales were pushed backward into the completed second review period as a result of our changing the date of sale.

Company-Specific Comments

Comments by Petitioners

Comment 4. Petitioners argue that the Department erred in its calculation of Dongbu's U.S. imputed credit by not adding to it the bank fees for opening letters of credit. (These letter-of-credit fees are charges that Dongbu incurs on the international letters of credit for transactions between Dongbu and Dongbu U.S.A.) Furthermore, they argue that, for two reasons, the Department should use facts available for the bank fee amounts. First, they argue that certain verification exhibits demonstrate Dongbu's calculation of its average letter of credit fees (submitted in exhibit C–20 of its January 31, 1997, supplemental questionnaire response) grossly misstates the amount of bank charges. Second, they argue that Dongbu's reported letter of credit charges failed verification. To support this latter claim, petitioners cite the following quotation from the U.S. verification report:

> We discussed the bank charges for letter of credit transactions * * * We asked Dongbu to explain and document, for a sample transaction, how bank charges were calculated and allocated. Dongbu representatives were unable to volunteer a cogent explanation of how these charges were calculated, within a reasonable span of time. We therefore moved on to the next topic.

See September 16, 1997 verification report (revised and reissued on November 18, 1997) at 2.

Dongbu argues that its sample letter of credit calculation in exhibit C–20 of its supplemental questionnaire response did not fail verification, and that the verification exhibits fully support it. Furthermore, Dongbu argues that for two reasons the Department should not adjust the U.S. sales prices for letter of credit fees. First, Dongbu argues that the letter of credit fees are already included in Dongbu's reported imputed credit, and that to make an adjustment for the letter of credit fees in addition to the reported imputed credit would constitute double-counting an expense. It argues that because the imputed credit period begins with the date of shipment and ends with the date of payment, it covers the entire time the merchandise is in the accounts receivable ledgers of Dongbu, Dongbu Corporation, and Dongbu U.S.A. Therefore, Dongbu argues, the reported imputed credit incorporates all expenses associated with financing the intercompany payment, including the letter of credit charges.

Moreover, Dongbu argues that its reported imputed credit figure includes the entire cost of financing receivables by virtue of the use of the short-term interest rate of Dongbu U.S.A. as the interest rate in the calculation. The assumption in using Dongbu U.S.A.'s rate, Dongbu argues, is that it is representative of the cost of financing receivables during the entire time the receivables are outstanding. Thus, to add the actual charge for taking out the letter of credit in a case where credit cost is fully imputed would be tantamount to double-counting the cost of credit during the time covered by the letter of credit.

Dongbu further argues that the Department's precedent supports this

interpretation. It cites a case where the Department stated that "deducting both the actual [letter of credit] fees and the imputed costs (which include these fees) would be double counting." *See Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026, 19044 (April 30, 1996) ("*Bicycles*").

Second, Dongbu argues that the Department should not adjust the U.S. price for letter of credit fees because the record shows that the actual cost of the charges associated with the international letters of credit is such a minor expense that it is unnecessary to adjust the U.S. price.

Petitioners argue that Dongbu is incorrect in stating that its letter of credit fees are already included in its imputed credit calculation, and that in fact the Department verified that these fees are not included in the imputed credit expense or separately reported elsewhere in Dongbu's responses. *See* the September 16, 1997 verification report (revised and reissued on November 18, 1997), at 2 (quoted above).

Petitioners argue that this verification finding is further supported by other record evidence, such as the fact that Dongbu receives letters of credit from the Korean Exchange Bank, but this bank is not listed as a lending institution bank in the credit expense calculation that Dongbu prepared.

Furthermore, petitioners argue that *Bicycles* is inapposite. In *Bicycles*, an affiliated U.S. importer paid fees to its corporate parent to cover interest charges on letters of credit, and the fees were already included in the reported credit expense. Here, petitioners argue, the Department verified that Dongbu did not include the letter of credit expenses in the imputed credit expense. Moreover, at issue in *Bicycles* were interest charges associated with letters of credit; here the issue is other types of expenses associated with letters of credit. Additionally, petitioners argue, at issue in *Bicycles* was the payment from the U.S. affiliate to its corporate parent. Here the issue is fees paid to unaffiliated lending institutions. Accordingly, petitioners conclude, *Bicycles* is inapposite.

Therefore, petitioners argue, bank fees associated with letters of credit must be deducted from U.S. price as direct selling expenses in accordance with *Porcelain-on-Steel Cookware from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 54616, 54618 (October 21, 1996) ("*Cookware*"). There the Department found that "bank fees associated with the letter of credit transactions * * * are a direct selling expense * * *." Similarly, they argue, letter of credit fees were treated as direct selling expenses and deducted from U.S. price for both Union and POSCO in the preliminary results of this review, and therefore the Department must make a similar adjustment for Dongbu.

Petitioners further argue that Dongbu is incorrect in saying that the adjustment is small. They argue that Dongbu's calculation is flawed and understates the actual expense associated with letter of credit fees.

Department's Position. We agree with both parties in part. We agree with petitioners that we should deduct bank fees for letters of credit in addition to the calculated imputed credit figure. We do not agree with Dongbu's argument that an imputed credit figure covering the entire credit period inherently includes all credit/financing expenses. Where a respondent pays bank fees to finance a letter of credit related to a U.S. sale, we must adjust for these fees as they are direct selling expenses. Moreover, these fees are not implicitly included in the calculated imputed credit figure simply because the interest rate used is the interest rate of an American subsidiary.

Furthermore, adjusting for bank fees associated with letters of credit is consistent with our past practice. As petitioners point out, *Bicycles* is inapposite because it dealt with an interest payment between two affiliated companies. Here the expenses at issue are charges paid to an unaffiliated bank. As we stated in *Cookware*, "[w]e determined that bank fees associated with the letter of credit transactions for certain U.S. customers are a direct selling expense and have made a COS [circumstance-of-sale] adjustment for these fees." *See Cookware* at 45618. We have followed this precedent in these final results of review, and have adjusted for bank fees as a direct selling expense. *See also Ferrosilicon from Brazil; Amended Final Determination of Sales at Less Than Fair Value*, 59 FR 8598 (February 23, 1994) and *Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 62 FR 1954, 1969 (January 14, 1997).

However, we do not agree with petitioners that Dongbu's reported letter of credit fees failed verification, or that it is necessary to resort to facts available. At verification the Department found no inconsistencies in Dongbu's computation, which is supported by the verification exhibits. Therefore, in these final results, we have used the letter of credit fees as Dongbu reported them.

Comment 5. Petitioners argue that the Department erred in treating all except one of Dongbu's U.S. sales as EP sales, rather than as CEP sales. They set forth three arguments to support this contention. First, they argue that it is Dongbu U.S.A.'s Los Angeles office ("DBLA"), and not Dongbu, that plays the primary role in setting the price to the ultimate U.S. customer. They state that the record demonstrates that virtually all sales contact with the U.S. customer occurs through DBLA, and that DBLA is actively involved in price negotiation. The only confirmation of price and product characteristics, petitioners argue, is the sales contract, which is signed by DBLA and the unaffiliated U.S. customer. Nothing on the document indicates Dongbu's or Dongbu Corporation's involvement in the sale, nor is either entity bound under the contract.

Given this lack of involvement on the part of Dongbu, petitioners argue, Dongbu's statement that Dongbu approves all sales over the telephone, but has no written document showing the approval, is ludicrous. If Dongbu's approval is no more than a telephone approval, they state, with no written documentation showing the sales transaction and its terms, it can be no more than *pro forma*.

Moreover, petitioners dismiss Dongbu's statement that there is little negotiation regarding price on the part of Dongbu because its loyal U.S. customers already know the prices based on past experience. Petitioners also state that it is demonstrably untrue, because over the course of three administrative reviews, Dongbu's antidumping duty rate has declined steadily. This means that either prices in the home market or the U.S. market have changed (or that Dongbu has inaccurately reported its sales and expenses). In the previous review Dongbu certified that its home-market prices do not fluctuate and have remained constant for extensive periods of time. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18404 (April 15, 1997) ("*Second Review Final Results*") at 18409. As home-market prices have remained constant, and Dongbu's antidumping duty has not, this means, barring the intentional misreporting of data, that Dongbu's U.S. prices do in fact vary.

The falsity of Dongbu's claim regarding its role in the price negotiation process, petitioners argue, is

demonstrated by the fact that Dongbu does not know the final price charged to the U.S. customer until long after the sale is completed. Furthermore, petitioners argue, the fact that Dongbu may give DBLA confirmation that it can produce merchandise ordered does not demonstrate Dongbu's involvement in the price negotiation.

Petitioners further argue that the only record evidence speaking to Dongbu's involvement in the sales negotiation relates to two sales transactions discussed at verification. In the first transaction, Dongbu rejected a sale "because the specifications * * * were not acceptable." Petitioners argue that this production issue is completely irrelevant to the question of Dongbu's role in price setting. In the second transaction, Dongbu denied a request by an American customer for a discount due to a delayed shipment. As with the first transaction, petitioners argue, this denial does not demonstrate Dongbu's control of the price negotiation.

Petitioners argue that a more notable example of a discounted sale is observation 454, the sale which Dongbu reported as an EP sale and which the Department determined to be a CEP sale. There, they argue, the sales process was identical to all Dongbu's other U.S. sales which the Department treated as EP. For this sale, petitioners argue, DBLA located the U.S. buyer, negotiated the price, and arranged all other aspects of the sale. *See* Korean verification exhibit 13 at 21–22. Thus, petitioners argue, if the sales process for this sale qualifies as a CEP sale, as the Department has found, then the same sales process used for Dongbu's other U.S. sales must likewise be deemed CEP sales.

Secondly, petitioners argue that in addition to playing a significant role in the setting of prices, documentation on the record demonstrates that DBLA is also involved with almost every other stage of the U.S. transaction. Specifically, they argue, DBLA arranges and pays for cash deposits for regular duties and for countervailing and antidumping duties, takes title to the subject merchandise and serves as importer of record, clears the subject merchandise through customs, invoices the U.S. customer, collects payment from the U.S. customer, finances the sale to the U.S. customer, and arranges warehousing and demurrage in the United States. The extent of DBLA's involvement in the U.S. sales process, petitioners argue, is also demonstrated by the value of its indirect selling expenses relative to the value of Dongbu's indirect selling expenses in Korea on behalf of its home market and U.S. sales. An analysis of Dongbu's role on behalf of U.S. sales shows, they argue, that it is limited to confirming the availability of production capacity and characteristics, arranging export transportation, and issuing pro forma approvals of DBLA's sales terms to the unaffiliated U.S. buyer.

Finally, petitioners argue that the Department must classify Dongbu's U.S. sales as CEP transactions to be consistent with its analysis in *Certain Cut-to-Length Carbon Steel Plate from Germany; Final Results of Antidumping Duty Administrative Review*, 62 FR 18390 (April 15, 1997) ("*German Plate*"). There the Department identified seven functions performed by the respondent's U.S. affiliate. The Department determined that these seven functions warranted classifying and analyzing the affiliates' resales as CEP transactions. Petitioners argue that with the possible exception of customer credit checks, DBLA performs all of those functions as Dongbu's selling affiliate in the United States. Perhaps more important, petitioners state, record evidence demonstrates that, like the U.S. affiliate in *German Plate*, DBLA plays the central role in negotiating U.S. transaction price.

Dongbu argues that the U.S. sales the Department classified as EP transactions were correctly classified. First, they argue that the Department has considered and rejected petitioners' argument in the first and second administrative reviews of this order, and that nothing new—either factually or legally—has changed with respect to this issue since those reviews. Furthermore, they argue that the Department again examined this issue at the verifications in this review, and found nothing to support petitioners' argument.

Second, Dongbu argues that petitioners' assertions that DBLA engages in substantial selling functions, which include price negotiation, have no basis in the record and are at odds with the Department's findings in the sales verification reports. It is a matter of record, Dongbu argues, that the most significant selling activities related to U.S. sales occur in Korea, including sales negotiation, production scheduling, shipping scheduling, Korean brokerage, handling, and loading expenses, Korean inland freight, and ocean freight. Dongbu states that DBLA has no direct role in these arrangements and that these expenses are all incurred in Korea.

Furthermore, Dongbu argues that during the verification in Korea the Department examined and verified multiple transactions that demonstrated that Dongbu U.S.A. was merely a communications link, and that Dongbu approved the terms of all sales. One such sale, it argues, was the sale (cited by petitioners) in which Dongbu denied a requested discount from an American customer. Dongbu states that after receiving the request, it wrote directly to the U.S. customer, and explained that constant requests for discounts could warrant a termination of their relationship. Nothing could be more illustrative, Dongbu argues, of Dongbu U.S.A."s function as a communication link and Dongbu's authority in setting the terms of sale. Dongbu also identifies observation 454 as another sale which serves as a prime example of Dongbu's ultimate authority over U.S. sales: in that transaction, Dongbu argues, it decided that a discount was appropriate, and confirmed the sale.

Moreover, Dongbu argues that there are fundamental differences in the relationship between Dongbu and its subsidiary and the relationship between the respondent and its sales affiliate in *German Plate*. In this regard the U.S. verification report dated December 16, 1997, says (at 2) that Dongbu U.S.A. "act[s] solely as an intermediary, inasmuch as headquarters in Korea exercise[s] active authority over pricing and terms." In *German Plate*, the U.S. sales affiliate played a major role in negotiating price with customers. Thus, it argues, *German Plate* cannot serve as a basis to reclassify Dongbu's transactions as CEP.

Third, Dongbu argues that all of DBLA's sales activities which petitioners argue warrant reclassifying Dongbu's sales as CEP sales are consistent with EP classification. To act as importer of record, to receive purchase orders to forward to Seoul for approval, to issue sales contracts once the quantities and prices have been approved by Seoul, to borrow to finance accounts receivable, to handle billing and accounting functions, and to contact U.S. customers, are all, Dongbu argues, well within the scope of activities normally associated with acting as a communications link and document processor. Furthermore, they argue that the CIT has consistently upheld purchase price ("PP") (now called "EP") classification in circumstances in which the related U.S. company undertook activities equal to, or far more extensive than, those at issue here. Dongbu cites the following four examples:

- PP classification was upheld where U.S. affiliate first shipped merchandise to independent warehouses whose cost was borne by U.S. affiliate, U.S. affiliate was importer of record, U.S. affiliate

paid estimated antidumping duties on the merchandise, U.S. affiliate retained title prior to sale to the unrelated U.S. party, and U.S. affiliate received commissions for its role in the transactions. *Outokumpu Copper Rolled Products* v. *United States*, 829 F. Supp. 1371, 1379–1380 (CIT 1993), *appeal after remand dismissed*, 850 F. Supp. 16 (CIT 1994).

- PP classification was upheld where U.S. affiliate received purchase orders and invoiced related customer, U.S. affiliate was invoiced for and directly paid shipping company for movement charges, U.S. affiliate occasionally warehoused, at its own expense, and U.S. affiliate received "substantial mark-up" over price at which it purchased from exporter. *E.I. Du Pont de Nemours & Co., Inc.* v. *United States*, 841 F. Supp. 1237, 1248–50 (CIT 1993).
- PP classification was upheld where U.S. affiliate invoiced customers, collected payments, acted as importer of record, paid customs duties, and may have taken title to the goods when they arrived in the United States. *Zenith Electronics Corp.* v. *United States*, 18 CIT 870, 873–874 (1994).
- PP classification was upheld where U.S. affiliate processed purchase order, performed invoicing, collected payments, arranged U.S. transportation, and served as the importer of record. *Independent Radionic Workers* v. *United States*, CIT Slip Op. 95–45 (March 15, 1995).

For all of these reasons, Dongbu argues, the Department should reject petitioners' argument.

Department's Position. We agree with petitioners that Dongbu's U.S. sales should be treated as CEP transactions. In the final results of the prior reviews, in order to determine whether sales made prior to importation through Dongbu's affiliated U.S. sales affiliate (DBLA) to an unaffiliated customer in the United States were EP or CEP transactions, we analyzed Dongbu's U.S. sales to determine whether the following three factors were present: (1) whether the merchandise was shipped directly from the manufacturer (Dongbu) to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling affiliate (DBLA) was limited to that of a processor of sales-related documentation and a communications link with the unrelated U.S. buyer. We concluded that DBLA was no more than a processor of sales-related documentation and a communications link, and classified Dongbu's U.S. sales as EP transactions. *Second Review Final Results* at 18423.

As explained above in the "Fair-Value Comparisons" section of this notice, to ensure proper application of the statutory definitions, where a U.S. affiliate is involved in making a sale, we consider the sale to be CEP unless the record demonstrates that the U.S. affiliate's involvement in making the sale is incidental or ancillary. The statement in the verification report, quoted by Dongbu, that Dongbu U.S.A. "act[s] solely as an intermediary, inasmuch as headquarters in Korea exercise[s] active authority over pricing and terms' is not dispositive. Rather, the totality of the evidence regarding Dongbu's sales process demonstrates that DBLA's role is more than ancillary to the sales process.

We base this finding on several factors. First, we note that all of Dongbu's U.S. sales are made through DBLA, and that Dongbu's U.S. customers seldom have contact with Dongbu. Furthermore, it is DBLA (and not Dongbu) that writes and signs the sales contract. Though respondents claim that Dongbu approves all sales prices by telephone, such approval does not make DBLA's role in the sales negotiation process ancillary. Nor can we conclude that Dongbu's control over price discounts makes DBLA's role in the sales process ancillary. As with respondent A.G. der Dillinger Hüttenwerke ("Dillinger") in *Plate from Germany*, there is no evidence that Dongbu was involved in the sales process at all until after its U.S. subsidiary made the initial arrangements.

Furthermore, we find that, in addition to playing a key role in the sales negotiation process, DBLA played a central role in all sales activities after the merchandise arrived in the United States. As petitioners have pointed out, these activities included issuing invoices, collecting payment, financing the sale to the U.S. customer, and arranging for warehousing and demurrage in the United States. Though Dongbu is correct that the CIT has upheld an PP (or EP) classification despite significant sales activities on the part of the U.S. subsidiary, that fact does not render these activities irrelevant in making this determination. These activities carried out by DBLA are both extensive and significant, as evidenced by the value of the indirect selling expenses incurred by DBLA relative to the value of the indirect selling expenses incurred by Dongbu. Further, the existence of significant selling expenses in the United States itself belies Dongbu's claim that the role of its U.S. affiliate was not meaningful. *See* Dongbu's January 31, 1997 submission, exhibit 22.

In *German Plate* we stated, "We consider [the U.S. subsidiary] Francosteel's extensive involvement in negotiating respondent's U.S. sale during this review, along with Francosteel's other sales activities, to warrant classifying this sale as CEP." *German Plate* at 18392. For the same reasons, we have classified Dongbu's U.S. sales as CEP in these final results.

Comment 6. Petitioners argue that the Department erred with respect to Dongbu by classifying U.S. sales observation 440 as an EP sale, rather than a CEP sale. They argue that for three reasons this sale must be classified as a CEP sale. First, they argue that evidence on the record suggests it was not sold until after importation. They cite a statement contained in Dongbu's supplemental questionnaire response in which Dongbu stated that "Dongbu U.S.A. generally issues the invoice and sends it to the customer about a week *before* the expected arrival of the merchandise at the port." *See* Dongbu's January 31, 1997 supplemental questionnaire response at 33 (emphasis in original). Based on this information and documentation contained in verification exhibit five (the verification exhibit associated with this sale), petitioners argue that observation 440 must have been sold after entry. Second, they argue that documents in verification exhibit five contain discrepancies which render Dongbu's reported contract date (which the Department used as the sale date in the preliminary results) demonstrably untrue. Specifically, they argue that the sales contract in that exhibit does not even pertain to observation 440. Third, they argue that evidence in verification exhibit five indicates that DBLA played the primary role in price negotiation.

Furthermore, petitioners argue that the Department should resort to facts available in determining the warranty and warehousing expenses for this sale because Dongbu did not report any expenses for warranty and warehousing, and because information on the record suggests that Dongbu did not even report the correct sales price on its U.S. sales tape.

Finally, petitioners argue that the Department should consider deducting warranty and warehousing expense amounts for all of Dongbu's U.S. sales. Their basis for this argument is that the Department discovered at verification that for two of six sales verified, Dongbu incurred additional, unreported sums for warehousing and warranty charges for discounts necessitated by late shipments. Petitioners believe, based on

proprietary information on the record, that it is not unlikely that additional sales were canceled, and that Dongbu did not fully report expenses associated with those sales.

Dongbu argues that the petitioners have misrepresented what Dongbu reported as the date of sale. Dongbu states that the date it reported as the date of sale is not the contract date, but the date of the invoice between Dongbu and Dongbu Corporation. This date, it states, is before the entry date. Therefore, it argues, petitioners are incorrect in stating that there is evidence that the merchandise was not sold until after importation.

With respect to petitioners' second argument, Dongbu argues that the contract contained in verification exhibit five does cover observation 440. With respect to petitioners' argument that the Department should make an adjustment for unreported warehousing and demurrage charges, Dongbu argues that the Department verified all expenses for sale 440, and that there is therefore no reason to impose any additional charges on any of Dongbu's U.S. sales.

Department's Position. We agree with petitioners in part, and disagree with petitioners in part. As indicated in the Department's response to Comment 5, we have determined to treat Dongbu's sales as CEP sales in these final results. Observation 440 is no exception. However, we disagree with petitioners that we should make additional deductions from observation 440 or any of Dongbu's other U.S. sales for allegedly unreported expenses. We find no evidence that this sale was warehoused or that it incurred warranty expenses, or that Dongbu failed to report the correct sales price. Thus, there is only one U.S. sale for which Dongbu failed to report warehousing expenses, and these expenses Dongbu reported in its supplemental questionnaire response prior to verification. We found no other unreported expenses at verification. Therefore, we find no reason to make additional adjustments for warranty or warehousing expenses (beyond what Dongbu reported) for any of Dongbu's U.S. sales.

Comment 7. Petitioners argue that the Department erred in the calculation of Dongbu's U.S. imputed credit by using the bill of lading date as the start of the credit period, rather than the shipment date from Dongbu's production facility. They argue that in this review, unlike prior reviews, information is on the record demonstrating that there exists a significant time lag between the date of shipment from the factory and the bill of lading date. Thus, they argue, the Department is not bound by its decision in previous reviews to utilize the bill of lading date as the start of the credit period because the premise of that decision was that no discrepancy existed between the bill of lading date and the actual shipment date. The existence of the discrepancy, petitioners argue, distinguishes this case from *Melamine Institutional Dinnerware Products from Indonesia; Determination of Sales at Less Than Fair Value*, 62 FR 1719 (January 13, 1997) ("*Dinnerware*"), a case Dongbu has used to support its argument that the Department should use the bill of lading date as the start of the credit period. In *Dinnerware* the Department accepted the bill of lading date as the date of shipment because it verified that there was "no evidence to indicate any difference between the date of factory shipment and the bill of lading date." *Dinnerware* at 1724. Such is not the case here, petitioners argue.

Petitioners further argue that it would be especially inappropriate to use the bill of lading date here because in a supplemental questionnaire the Department requested that Dongbu calculate imputed credit based on the actual shipment date, and not the bill of lading date, but Dongbu refused to do so. They argue that the Department should not reward such recalcitrance. As an alternative, petitioners recommend that the Department use the date of the commercial invoice from Dongbu to Dongbu Corporation as the shipment date. Use of this date, petitioners argue, would neither reward Dongbu for its recalcitrance nor be unduly adverse. In addition, petitioners argue, the Department determined at verification that the commercial invoice between Dongbu and Dongbu Corporation is "prepared at the same time that Dongbu Steel ships the merchandise * * *." *See* the July 8, 1997 verification report at 4. As another possible alternative, petitioners suggest the Department add to Dongbu's reported imputed credit a credit amount reflecting the maximum period of time Dongbu estimated as existing between the date of factory shipment and the bill of lading date.

Dongbu argues the Department was correct in using the bill of lading date as the shipment date. It argues, based on the fact that it reported and the Department accepted the bill of lading date as the shipment date in all prior reviews of this order, that its action here was not the product of recalcitrance, but of reliance. It argues further that it was justified in its action, as explained in its supplemental questionnaire response, because of the difficulties associated with specifying shipment dates for particular transactions of the subject merchandise. The petitioners' appeal to equity, Dongbu argues, is ironic given that the equities here run plainly in favor of Dongbu. A change in practice at this stage, it states, would implicate the specter of arbitrariness in the Department's action.

Department's Position. We agree with petitioners in part. Unlike prior reviews of this order, the record of this review contains information that there is sometimes a significant difference between the date of shipment from the factory and the date of the bill of lading. Dongbu has stated that the bill of lading is consistently generated within a few days of actual shipment of the coil from the factory, but has also stated that the inventory carrying period is sometimes longer than a few days. *See* Dongbu's January 31, 1997 submission at 35. Given these facts, we can no longer use the bill of lading date as the shipment date in the credit calculation.

However, we also accept the argument Dongbu set forth in its January 31, 1997, supplemental questionnaire response that it would be an excessive administrative burden to report the shipment date for each sale because Dongbu does not have an automated system that links individual shipping invoices to commercial invoices and commercial invoice line items. Therefore, because its U.S. sales are sometimes shipped in lots from the plant to the port over a period of days, Dongbu would have to trace manually from coils reported on individual shipping invoices to the appropriate line items on commercial invoices. *See* Dongbu's January 31, 1997 supplemental questionnaire response at 3–4. Given the administrative burden of such a task, it would be inappropriate for the Department to resort to adverse facts available to represent the credit period.

Because we cannot use the bill of lading date as the shipment date, and because of the excessive administrative burden of reporting shipment dates for each sale, petitioners' suggestion that we use the date of the commercial invoice from Dongbu to Dongbu Corporation as the factory shipment date is not unreasonable. Our verification report states, "At the same time that Dongbu ships the merchandise (or sometimes immediately thereafter), it prepares a * * * commercial invoice." *See* July 8, 1997 verification report at 4. Based on this information, we determine that the commercial invoice date is sufficiently close to the factory shipment date that it can serve as the start of the credit period without being adverse to Dongbu. Therefore, we

have used this date in the credit calculation in these final results of review.

Comment 8. Petitioners argue that the Department erred in not making a deduction from Dongbu's export price for Korean warehousing expenses incurred on cold-rolled products. They argue that the statute requires that these expenses be deducted from U.S. price because it says that the price in the United States must be reduced by the amount of "costs, charges, or expenses * * * incident to bringing the subject merchandise from the original place of shipment in the exporting country." *See* § 772(c)(2)(A) of the Act. Furthermore, petitioners argue, according to the SAA, warehousing expenses are included among movement expenses. It states that the movement expense deduction includes a deduction for "transportation and other expenses, including warehousing expenses * * *." SAA at 823. Moreover, the Department itself, petitioners argue, stated in the comments to the new regulations that the statute requires the deduction of "all movement expenses (including all warehousing) that the producer incurred after the goods left the production facility." *See Final Rules* at 27345.

Petitioners also argue that the reason the Department gave in prior reviews for not making the warehousing adjustment is not valid. In prior reviews, petitioners state, the Department failed to make the warehousing adjustment because it accepted Dongbu's characterization of these expenses as cost of manufacturing ("COM") expenses. Petitioners argue that neither the statute nor the regulations permit exceptions to the mandatory nature of the deduction based on how the respondent characterizes the expenses or records them in its financial records. For the Department to make an exception here would be particularly unjust, petitioners argue, because the Department has not captured the warehousing expenses at issue in any direct price adjustment. To "capture" them in cost data, petitioners argue, would never result in a direct adjustment to price as mandated by the statute.

Dongbu argues that in accordance with its normal accounting practices which predate the antidumping duty orders, it reported these warehousing expenses as manufacturing overhead associated with its Seoul works. The cost of pre-shipment overhead of this kind, it argues, is no different from overhead expenses associated with temporarily storing semi-finished products between production lines. Therefore, it argues, to deduct them from U.S. price even though they are already accounted for in manufacturing overhead would constitute double counting. Thus, it states, in the prior review of this order the Department properly treated these costs as pre-shipment manufacturing costs, and not as selling expenses.

Dongbu also argues that if the Department does decide to deduct this expense as a direct expense, it should make the deduction only for cold-rolled products, and not corrosion-resistant products, because corrosion-resistant products are never stored in the warehouse. It further argues that the Department should also adjust the reported cost of cold-rolled products downward by an offsetting amount to avoid double-counting of expenses.

Department's Position. We agree with petitioners and Dongbu in part. We agree that we should make an adjustment to Dongbu's U.S. price for warehousing expenses incurred after the subject merchandise has left the Seoul plant. As the SAA specifies at 823, the URAA's mandate to deduct movement-related expenses specifically includes "warehousing" expenses. Further, our new regulations (which, though not binding on this review, embody our latest practice) state that "[t]he Secretary will consider warehousing expenses that are incurred after the subject merchandise or foreign like product leaves the original place of shipment as movement expenses." *See* 19 CFR § 351.401(e)(2) (May 19, 1997). Here, the original place of shipment is Dongbu's Seoul production facility, and the warehouse is in Inchŏn. Therefore, because these warehousing expenses are incurred after leaving Seoul, they must be considered movement expenses, and they must be deducted from Dongbu's export price.

However, we agree with Dongbu that we should deduct these movement expenses only from the selling prices of cold-rolled products, and not corrosion-resistant products, because they are incurred only on cold-rolled products. Furthermore, we agree with Dongbu that it would be double-counting to include these expenses as both a movement expense and overhead. Therefore, in these final results we have deducted them from Dongbu's COM for cold-rolled products.

Comment 9. Petitioners argue that the Department erred by accepting Dongbu's calculation of inland freight costs incurred by an affiliated party in the home market, but not using a comparable formula for calculating transportation-related costs incurred by an affiliated party in the U.S. market. In the home market inland freight is incurred by Dongbu's affiliated entity Dongbu Express. In the U.S. market Dongbu's affiliate DBLA incurs expenses for arranging U.S. brokerage and handling, U.S. customs clearance, warehousing certain sales, and paying customs duties. Both of these entities contract with unaffiliated entities to perform the services. Petitioners argue that the Department erred by accepting Dongbu's reported home-market inland freight costs (which consist of the unaffiliated trucking company's charge to Dongbu Express plus a markup attributable to Dongbu Express' estimated overhead and profit), but not making a similar mark-up (and deducting that markup from U.S. price) for the profit DBLA realizes on its provision of transportation-related services.

Petitioners argue that, to the extent that DBLA charges amounts in addition to its costs for the transportation services, these amounts represent expenses incurred in bringing the merchandise from the place of shipment to the unaffiliated U.S. customer. Thus, petitioners argue, the mark-ups DBLA and Dongbu Express charge are identical in substance even though they may be different in form, and consistency requires that the Department treat them the same way. Moreover, they argue that the Department's failure to adjust for the markup is inconsistent with its treatment of an affiliated-party markup in its analysis of POSCO. Finally, they argue that because Dongbu has failed to report the amount of DBLA's markup on these sales, the Department should rely on facts available. Petitioners suggest that as facts available, the Department should apply to DBLA the markup percentage that Dongbu Express charges for its services. As an alternative petitioners argue that, if the Department refuses to make a markup adjustment in the U.S. market, it should also not make a markup in the home market.

Petitioners note that in the previous review the Department rejected this argument, and gave several reasons for this rejection. None of these arguments, petitioners state, withstand scrutiny. First, petitioners state, the Department argued that the sums DBLA paid to unaffiliated companies were already reported on the record. Petitioners argue that this is true, but irrelevant. Their argument, they state, is not that the cost to DBLA has not been fully reported, but that the ultimate cost to Dongbu for these services is understated, because it does not include the markup charged by DBLA.

Second, petitioners state, the Department argued that because the U.S. affiliate did not directly perform these

services, but rather contracted for them, the adjustment should not be made. Petitioners argue that this statement too, though true, is irrelevant because neither Dongbu Express in the home market nor DBLA in the U.S. market directly perform the transportation services, but rather contract with unaffiliated service providers for them. Furthermore, POSCO's U.S. affiliates also do not directly perform the services in question, yet the Department made an additional deduction from U.S. price to account for markups.

Third, petitioners state that the Department argued that there was no legal basis for the deduction of profit on these services because "U.S. profit deductions are allowed only in connection with CEP sales, and not EP sales." Petitioners see two flaws in this argument. First, they argue that the Department did not apply this argument to the deductions made for markups by POSCO's affiliates and Dongbu Express. Second, they state that it misconstrues the statute and petitioners' argument. They state that they do not seek the CEP deduction for profit earned in the United States which is provided for in section 772(f) of the Act. Rather, they ask that the Department fully account for all movement expenses because the statute requires that they be deducted in their entirety from U.S. price.

Dongbu argues that the Department rejected petitioners' argument in the second review of this order, and should do so here as well. It argues that there the Department determined that Dongbu's transactions with DBLA and Dongbu Express were not identical in substance, and that the expenses at issue were fully reflected in the brokerage fees paid by DBLA, and reported by Dongbu in its response. It argues that given no change in the factual record or the manner in which Dongbu reported these expenses, the Department should adhere to its past practice and reject petitioners' arguments on this issue. It notes too that the third reason upon which petitioners allege the Department based its determination (*i.e.*, that U.S. profit deductions are allowed only for CEP sales) was not a reason the Department gave to support its determination, but was a statement the Department used to summarize Dongbu's argument. Dongbu reiterates its position that there is no legal basis for deducting an amount for "profit" on these sales because U.S. profit deductions are permitted only in connection with CEP sales.

Department's Position. We agree with petitioners in part, and have changed our position from the preliminary results of this review and the final results of the prior review. Because the amounts paid to Dongbu Express in the home market and to DBLA in the U.S. market are both for the provision of transportation-related services, we believe that they are similar in substance. Accordingly, the more reasonable approach for these final results is to treat these expenses in the same way.

However, we do not agree with petitioners' preferred approach for treating the two markups identically. We are not satisfied from the information on the record that the markups between Dongbu and its affiliates in either market reflect arm's-length market values. Given the closeness of the affiliation between Dongbu and the affiliated entities at issue, we cannot presume the arm's-length nature of the markups, nor can we be certain that they are not simply intra-company transfers of funds. However, petitioners' suggestion that we use Dongbu Express's markup for export services as a surrogate for DBLA's markup for import services is inappropriate. The use of a surrogate for missing information is not justified where, as here, we never requested the respondent to provide the missing information, and where there are other options. Given the facts of this situation, we have determined that in this review we will adopt petitioners' alternative suggestion of not making a markup adjustment in either the U.S. or home markets.

Comment 10. Petitioners argue that the Department erred in granting Dongbu a home market adjustment which Dongbu allegedly mischaracterized in its submissions. They base their argument that Dongbu mischaracterized this adjustment on the following allegations:

- The expense is identified differently in Dongbu's financial statements and in the list of general expenses (contained in Dongbu's questionnaire response) from the way it is identified in Dongbu's claim for an adjustment;
- The Department's translator translated the name of the adjustment differently at the Korean verification than Dongbu translated it in its various submissions;
- There is a distinction in how Dongbu treats the expense with respect to its end-user customers (on the one hand) and its distributor customers (on the other hand).

Petitioners argue that Dongbu should be held to the way it characterizes these adjustments in its own financial records and agreements. Moreover, they argue, where the proper translation of a particular term is disputed, it is appropriate for the Department to rely upon its own translator, as it did in the second review of this order. *See Second Review Final Results* at 18411. Furthermore, petitioners argue that Dongbu's stated rationale for the distinction in treatment is not supported by evidence on the record. At the verification, Dongbu stated that the rationale behind the distinction is that distributors tend to buy in larger quantities than do end-users. *See* July 8, 1997 verification report at 10. Petitioners' analysis (submitted in its case brief) allegedly demonstrates that this rationale is not supported by Dongbu's sales listing. Finally, petitioners argue that because Dongbu mischaracterized the adjustment, the Department should use adverse facts available with respect to it.

Dongbu argues that petitioners' argument is not supported by record evidence. First, it argues that information on the record demonstrates that it does not, contrary to petitioners' argument, differentiate the expense at issue by class of customer. Second, it argues that the record of the review regarding the circumstances surrounding the expense should dispel any confusion resulting from translation questions. Third, it argues that petitioners are inconsistent in their own translation of the name of the expense.

Department's Position. We agree with Dongbu. Based on analysis not capable of public summary, we have determined that no basis exists in the record evidence to reject Dongbu's characterization of the requested adjustment. *See* the Department's final results analysis memorandum for additional information.

Comment 11. Petitioners argue, based on information given in the verification report, that Dongbu has understated its depreciation expense by not including the expenses related to the revaluation of depreciable assets. As a result, petitioners argue, Dongbu understated its cost of production and constructed value. Therefore, petitioners argue, in the final results the Department should revise Dongbu's costs upward to reflect the increase resulting from the company's revaluation of depreciable assets.

Dongbu argues that petitioners have misstated the amount of the difference as given in the verification report. It argues that given the insignificance of the difference, the Department correctly determined that it was appropriate to accept the reported depreciation expenses without adjustment.

Department's Position. We agree with petitioners in part. We agree that

Dongbu's reported depreciation is understated, and should therefore be adjusted. However, we agree with Dongbu that petitioners' case brief misstates the amount of the understatement. The correct amount is shown in the July 8, 1997 verification report at 14–15. In these final results we have adjusted Dongbu's reported depreciation to reflect the revaluation of the depreciable assets.

Comment 12. Petitioners argue that there is overwhelming evidence on the record demonstrating that BUS and POSAM were much more than mere "processors of sales-related documentation" or "communication links" for POCOS's and POSCO's U.S. sales. Petitioners note that the Department, in its preliminary results of *German Plate*, identified several functions performed by the respondent's U.S. affiliate that warranted classifying and analyzing the affiliate's resales as CEP transactions. Petitioners argue that, with the possible exception of customer credit checks, both BUS and POSAM performed all of those functions as POCOS's and POSCO's sales affiliates in the United States, and other functions as well.

Petitioners state that record evidence and POCOS's and POSCO's own statements during verification demonstrate that, like Dillinger's U.S. affiliate, BUS and POSAM play the central role in negotiating U.S. transaction prices. Regarding BUS, petitioners cite statements in the Department's report of the verification of the POSCO Group conducted in Korea ("Korea verification") that petitioners claim indicate, in contradiction to later statements made at the verification of BUS ("California verification"), that BUS could suggest prices to be charged to the U.S. customer and that BUS was involved in the establishment of quarterly base prices it would pay for the subject merchandise. Petitioners cite statements made by company officials and noted in the Department's California verification report that are seemingly contradictory: that BUS needed to know the quarterly base prices in order to be sure that it would not lose money, and that POCOS decided whether particular sales would be completed, and the prices, without input from BUS. Petitioners question the extent to which the U.S. customers are aware of POCOS pricing, given BUS's statement at the California verification that the U.S. customers were not informed of the quarterly base prices, and petitioners question how those U.S. customers could have proposed bid prices that were never rejected unless they consulted with BUS on the setting of the prices. Petitioners also argue that the fact that BUS is not controlled by POCOS provides further support for the conclusion that BUS acts independently to set transaction prices in the United States, and note that the respondent provided no tangible evidence of contact between U.S. customers and POCOS with regard to pricing.

Petitioners argue that POSAM, like BUS, had considerable discretion in the setting of U.S. prices. Petitioners note that there is no evidence to suggest that any price proposed by a U.S. customer was ever rejected by POSCO, even though POSAM claimed at the verification of POSAM ("New Jersey verification") that the U.S. customers were not aware of the quarterly base prices that had been provided to POSAM by POSCO.

Petitioners argue that the Department's New Jersey verification report demonstrates that the format of the computer spreadsheet files containing POSAM's U.S. sale cost breakdowns indicates that POSAM actively determined the amount of profit it would realize on its sales. Petitioners argue that this conclusion is supported by the fact that the profit field amounts were entered into the files as discrete figures, rather than being calculated by a formula as a residual between POSAM's selling price and its costs.

Petitioners argue that the record shows that, with the exception of POSCO sales to one specific U.S. customer, in which it was clear that POSAM was not included in the sales process, BUS and POSAM had the primary role with respect to every aspect of each transaction, and assumed the sole responsibility for the most significant portions of each transaction. Petitioners state that in addition to having significant discretion in pricing and active involvement in negotiating the terms of sale for each transaction, BUS and POSAM also arranged for a variety of expenses characterized by the Department under the broad category of movement expenses. Petitioners state that BUS and POSAM served as the importers of record, took title to the merchandise, and handled other administrative issues pertaining to the U.S. customers.

Finally, petitioners argue that the levels of involvement of BUS and POSAM in the U.S. sales are consistent with the substantial amount of selling, general, and administrative expenses ("SG&A") these companies incurred during the POR.

The POSCO Group argues that its U.S. sales should be classified as EP sales because POSAM and BUS function as communications facilitators for U.S. sales, and POSCO and POCOS set the terms of sale, including price, for U.S. sales. The POSCO Group notes that the Department determined in its second review final results that these entities operated as communications facilitators, and that the existence of sales contacts between the U.S. customers and these U.S. affiliates indicates nothing more than this limited role in the process nor establishes that the affiliates played any role in the actual setting of the prices. The POSCO Group also argues that POSAM and BUS did not participate in negotiation of other key sales terms for U.S. sales, citing as evidence of this a sale examined at the California verification for which POCOS required that the product characteristics of the merchandise requested by the U.S. customer be changed.

The POSCO Group argues that in numerous previous cases, including the first and second reviews of these orders, respondents' sales were classified as EP (or formerly purchase price) sales when their U.S. affiliates undertook activities identical to, or even in addition to, those undertaken here by POSAM and BUS. *See, e.g., Brass Sheet and Strip from the Netherlands; Final Results of Antidumping Duty Administrative Review*, 61 FR 1324, 1326 (Jan. 19, 1996); *Certain Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review*, 61 FR 18547, 18551, 18562 (Apr. 26, 1996); *Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rods from France*, 58 FR 68865, 68869 (Dec. 29, 1993) ("*Wire Rod from France*"); *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland*, 56 FR 56363, 56371 (Nov. 4, 1991); and *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from France*, 58 FR 37125, 37133 (July 9, 1993). The POSCO Group argues that functions such as maintaining contact with customers requesting price quotations, invoicing customers, collecting payment from the customer, maintaining relationships with customers, serving as importer of record, arranging and paying cash deposits for antidumping and countervailing duties, arranging and paying for brokerage, and minimal roles in U.S. transportation services, are activities commonly undertaken by an affiliated selling entity that acts as a

communications link. The POSCO Group also states that the petitioners' case brief does not mention numerous functions performed by the Korean manufacturers in the sales process.

With regard to the setting of prices, the POSCO Group states that record evidence indicates that negotiations with each customer for each individual sale typically began in one of two ways: the customer may suggest a price to POSCO or POCOS in the initial inquiry, which POSAM or BUS forwards to the Korean manufacturer; or if the customer does not suggest a price, POSAM or BUS, based on their knowledge of the quarterly base price already established by POSCO, sometimes suggest a price to POSCO or POCOS for the sale when transferring the inquiry to Korea. The POSCO Group states that the record indicates that POSAM and BUS did not negotiate with U.S. customers, but rather simply transmitted information to the U.S. customers and to the Korean entities. The POSCO Group argues that the record shows that U.S. customers were not notified of the quarterly base prices to POSAM and BUS, and that U.S. customers' bid prices were based in part not on those quarterly base prices but, rather, on knowledge of past pricing by POSCO and POCOS. Given the small number of U.S. customers and their ongoing, long-term relationship with POSCO and POCOS, the POSCO Group explains, those customers do not need guidance from POSAM or BUS regarding what their price offer should be.

The POSCO Group argues that the fact that POSAM and BUS are informed in advance of the quarterly base price is irrelevant, and that the record is clear that POSCO and POCOS do not consult with the U.S. affiliates with regard to the setting of those quarterly base prices. The POSCO Group states that the U.S. affiliates need to be able to estimate quarter by quarter the general value of transactions for cash flow purposes, insuring for example that they have adequate credit available to support their business. The POSCO Group cites statements by company officials at the U.S. verifications that neither POSAM nor BUS provided input to the manufacturers as to the setting of the quarterly base prices for the U.S. market, and that neither POSAM nor BUS provided those quarterly base prices to the U.S. customers.

The POSCO Group argues that the fact that a POSAM official "entered" the value for the POSAM markups into its cost spreadsheets is no indication that POSAM has an influence over the magnitude of that amount, but rather that these markup values were in fact residual amounts that were calculated elsewhere prior to computer entry.

The POSCO Group states that because there is no commercial reason to maintain records of an unsuccessful transaction and because POSAM's and BUS's communications with POSCO and POCOS, respectively, regarding customer price offers often occur by telephone, the fact that there is a lack of written proof of a rejection by POSCO or POCOS of a U.S. customer price offer is not surprising.

The POSCO Group states that the Department's verification report refers to various instances in which U.S. customers were in direct contact with POSCO and POCOS. The POSCO Group cites company official statements made at verifications in Korea and California that a POCOS official dealt directly with U.S. customers and, therefore, petitioners' claim that the record contains no evidence of contact between U.S. customers and POCOS is incorrect.

The POSCO Group challenges what it characterizes as petitioners' claim that POSCO's sales did not "go through POSAM" to the one specific customer whose sales petitioners state were correctly classified as EP sales in the preliminary results. The POSCO Group argues that POSCO's sales to that U.S. customer were no different than any other U.S. sales and that under petitioners' own logic, therefore, all of POSCO's U.S. sales are EP sales.

The POSCO Group challenges the petitioners' argument that the levels of SG&A incurred by POSAM and BUS indicate they are more than a communications link. The POSCO Group states that sales of subject merchandise account for only a small fraction of the U.S. affiliates' total sales, so the bulk of SG&A is clearly related to non-subject merchandise; that POSAM and BUS are selling entities only, whereas POSCO and POCOS are both selling and manufacturing entities; and that petitioners erroneously compare POSAM's and BUS's total SG&A expenses only to POSCO's and POCOS's selling expenses.

The POSCO Group argues that the key facts that led the Department to reclassify certain U.S. sales as CEP sales in *German Plate* are not present in these reviews. The POSCO Group indicates that in the German case the affiliate of the respondent Dillinger essentially negotiated all sales in accordance with the respondent's limited guidelines, that the U.S. affiliate had the power to negotiate and set the price for the respondent's single U.S. sale, that the foreign parent only set a minimum price floor after considering the order information provided by the U.S. affiliate, and that the U.S. affiliate was the one that negotiated with the single U.S. customer to try to obtain the best price. *German Plate* at 18391–92. The POSCO Group argues that POSAM and BUS, like the affiliates in other cases cited by the Department in *German Plate* as differing from Dillinger's affiliate, did not have or exercise such authority. See *E.I. Du Pont de Nemours & Co.* v. *United States*, 841 F. Supp. 1237, 1249–50 (CIT 1993), and *International Radionic Workers of America* v. *United States*, CIT Slip Op. 95–45 (March 15, 1995). Finally, the POSCO Group argues that in another case the Department classified sales as EP sales even though the U.S. affiliate participated in the sales negotiations with U.S. customers, because the U.S. affiliate did not have the flexibility to set the price or terms of sale and acted only as a processor of sales-related documentation. *Wire Rod from France* at 68869.

Department's Position. We agree with petitioners that respondent's U.S. sales (with the exception of those made to one customer) should be classified as CEP transactions. In the final results of the prior reviews, in order to determine whether sales made prior to importation through the POSCO Group's affiliated U.S. sales affiliates (POSAM and BUS) to an unaffiliated customer in the United States were EP or CEP transactions, we analyzed the POSCO Group's U.S. sales in light of three criteria: (1) whether the merchandise was shipped directly from the manufacturer (POSCO or POCOS) to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the functions of the U.S. sales affiliates (POSAM and BUS) were limited to those of processors of sales-related documentation and communications links with unrelated U.S. buyers. We concluded that BUS and POSAM were no more than processors of sales-related documentation and communications links, and classified the POSCO Group's U.S. sales as EP transactions. *Second Review Final Results* at 18433.

In this case, the record shows, and petitioners do not contest, that the first two criteria have been met. Consequently, the third criterion, pertaining to the level of affiliate involvement in making sales or providing customer support, is the determining factor in this instance. As explained above in the "Fair-Value Comparisons" section of this notice, to ensure proper application of the statutory definitions, where a U.S. affiliate is involved in making a sale, we

normally consider the sale to be CEP unless the record demonstrates that the U.S. affiliate's involvement in making the sale is incidental or ancillary. The record evidence here suggests that it is POSCO's and POCOS's roles that may be ancillary to the sales process (except with respect to one customer of POSCO, as noted below), and that in any case the record does not demonstrate that the U.S. affiliates' involvement in making the sales were incidental or ancillary.

We base this finding on several factors. First, we note that POSCO and POCOS's U.S. sales (with the exception of those to one U.S. customer) were made through POSAM and BUS, respectively, and that U.S. customers seldom had contact with POSCO or POCOS. The record establishes that POSAM and BUS were typically the parties contacted first by unaffiliated customers desiring to purchase the subject merchandise and also that POSAM and BUS sign the sales contracts. Such facts indicate that the subject merchandise is first sold in the United States by or for the account of the producer or exporter, or by the affiliated seller, and therefore that the sales in question are CEP transactions.

In addition to their key involvement in the U.S. sales process, the U.S. affiliates also played a central role in the sales activities after the merchandise arrived in the United States, including many of the criteria cited in *German Plate*. While the CIT has upheld a PP (or EP) classification despite such activities on the part of the U.S. subsidiary, that fact does not render these activities irrelevant in making this determination. While we disagree with petitioners' assertion that the record demonstrates that POSAM and BUS acted independently to set U.S. transaction prices and the other key terms of sale, the respondent's claim that the U.S. affiliates had no role in the setting of prices is not demonstrated by the record either.

The respondent's claim regarding the lack of U.S. affiliate involvement in the negotiation of prices is actually called into question by various factors. For example, the respondent did not provide tangible evidence of price rejection by POSCO or POCOS. With respect to other terms of sale, POCOS's apparent rejection of the product characteristics proposed by a U.S. customer only suggests that BUS is not autonomous with respect to the sales process and that BUS does not have all information regarding the production process, not that BUS's role in the process is ancillary.

While the fact that the "markup value" cell in POSAM's cost spreadsheets, unlike numerous other values, was entered by hand rather than as a formula does not appear to be relevant, a possible interpretation would be that the affiliate does in fact have some type of input into the magnitude of the markup it earns on the sales. More importantly, though, neither respondent's submissions nor its statements at verification explain the inconsistency of statements made during the California verification with respect to BUS's need to know the quarterly base prices.

Furthermore, the respondent's claim that the absolute and relative levels of SG&A incurred by the U.S. affiliates with respect to U.S. sales of subject merchandise are well below those of their non-subject merchandise operations is unsupported by the record, at least in part because the respondent did not provide information concerning selling expenses incurred in the United States. The POSCO Group chose not to report the indirect selling expense and inventory carrying cost information in its U.S. sales response, despite the fact that such reporting for U.S. sales of subject merchandise was requested in the Department's original questionnaire. When the Department indicated in a supplemental questionnaire that it may use facts available to determine these expenses if they were not reported by the POSCO Group, the POSCO Group again failed to report those expenses. The POSCO Group's response was as follows:

> "POSCO notes that it is not reporting these expenses because the Department has not notified POSCO that it believes that the sales at issue are not export price sales, and it does not want to burden the record with unnecessary data. POSCO's U.S. sales are export price sales and the Department ruled in the less than fair value determination and in the second review preliminary results that they were export price sales. POSCO has cooperated fully and will continue to cooperate fully with the Department. If the Department believes that it might reverse its practice from that in prior determinations, POSCO is willing to submit these expenses." *See* the March 3, 1997 supplemental Section C questionnaire response at 21.

The POSCO Group incorrectly assumed that the Department was required to meet certain preconditions before requesting and obtaining the information in question. The Department may solicit any information it reasonably believes may be relevant to its determinations, and is not obligated to solicit this information three or more times, especially given that there are statutory deadlines to which we must adhere. At least in part as a result of the respondent's choice not to report the information we requested, we cannot determine the extent of U.S. selling expenses pertaining to sales of subject merchandise. We cannot presume that the information the POSCO Group failed to provide would support a conclusion that the operations of POSAM and BUS with respect to the U.S. sales of subject merchandise were ancillary. Further, we are using the aggregate information as the basis for estimating the unreported U.S. indirect selling expenses.

We reject the POSCO Group's claim that the petitioners' admission that sales by POSCO to one U.S. customer were correctly classified as EP sales also suggests that all of the POSCO Group's U.S. sales should be classified as EP sales. For the sales to the one customer in question, POSAM was clearly not involved in the initial negotiations and the primary work relating to setting of price and other terms of sale. Given the information from the record indicating POSCO's substantial involvement in those sales and a very limited role for POSAM (*see, e.g.*, Exhibit 45 of the Korea Verification report), we are not reclassifying sales to that one customer as CEP sales.

Comment 13. Petitioners argue that the Department erred in its calculation of constructed value in its cold-rolled programming for the POSCO Group. Petitioners indicate that the Department deducted the variable representing credit expenses attributable to the gross unit price of the merchandise ("CRED1CV") twice in the calculation of CV.

The POSCO Group argues that this point is moot, given that normal value will not be based upon CV if the Department reverses its erroneous adjustment for alleged discrepancies in reporting methodology for cold-rolled product thickness.

Department's Position. We agree with petitioners that the Department erred in its calculation of CV by deducting CRED1CV twice. We have corrected the programming to reflect this change.

Comment 14. Petitioners argue that the Department should reverse its methodology and apply the major input and fair value provisions to transfers of substrate between POSCO, POCOS, and PSI. Petitioners note that the collapsing of entities does not negate the applicability of statutory provisions regarding affiliated persons. Petitioners state that the statute provides explicitly that the major input and fair value provisions are to be applied to transactions between affiliated persons, and that both the legislative history and public policy support the application of these provisions to all transactions involving transfers of substrate between affiliates. Petitioners assert that the

statute is silent with respect to the collapsing of entities for purposes of review, and consequently a decision to collapse entities cannot override the definition of "affiliated persons" which is explicitly mandated by statute.

Petitioners assert that applying the major-input or fair-value provisions selectively based on the purported extent of affiliation would be contrary to the express language of the statute and regulations, would have the effect of reading these provisions out of the statute in certain cases, and would preclude the transparency and predictability of the law.

Petitioners argue that collapsing is done when the Department finds that one party has a sufficient degree of control over another to create a significant possibility of price manipulation by the controlling party, and the Department's inherent authority to collapse two entities stems from several requirements: the need to review an entire producer or reseller, and not merely part of it; the need to ensure that antidumping margins are calculated as accurately as possible; and the need to prevent circumvention of antidumping duty orders by the establishment of alternate sales channels. *See Queen's Flowers de Colombia et al.* v. *United States,* CIT Slip Op. 97–120 (August 25, 1997), at 7–8. Petitioners conclude that collapsing is done to ensure that all of a respondent's U.S. sales are included in the calculation of dumping margins, and that such a determination has no bearing on the Department's treatment of affiliated party transactions within the meaning of the fair-value and major-input provisions of the statute. A determination to collapse entities merely indicates that one party has sufficient control over another to be in a position to manipulate the controlled party's pricing decisions, but this does not mean that the two parties are so closely intertwined that one may be deemed to be merely a division of the other or that the separate corporate identities of these two entities suddenly cease to exist.

Petitioners state that when the Department issued regulations to implement the URAA, it had the opportunity to limit the application of the major-input and fair-value provisions, but did not. Petitioners state that the legislative history is silent as to any limitation on the application of the major-input rule. Petitioners indicate that the methodology used by the Department in this instance would require in each case that the Department determine whether affiliated companies are operated as "divisions" of a whole, which would be burdensome, compared to simply applying the major-input rule and fair-value provisions to all affiliated parties.

Petitioners note that the statute explicitly precludes use of the COP to value transfers of substrates between affiliates if the transfer price is greater than the COP. Therefore, the Department has the discretion to ignore the transfer price to use a higher market value, but does not have the discretion to ignore transfer price in order to employ a lower value.

Petitioners note that the application of the major-input rule would not result in double-counting. Application of the major-input rule may result in an increase to a respondent's reported costs, but these adjusted costs also are used subsequently to calculate respondent's profits, and to the extent that costs are increased, the calculated profits are reduced. Furthermore, petitioners state that POCOS's profit is captured in the input price, and POSCO's profit is captured in the CV calculation.

Petitioners note that the Department in its analysis completely ignored the fact that the three companies (POSCO, POCOS, and PSI) are indisputably separate and distinct legal corporate entities, unlike in the case of *Certain Forged Steel Crankshafts from the United Kingdom; Final Results of Antidumping Duty Administrative Review,* 61 FR 54613 (October 21, 1996) ("*Crankshafts*"). In that case, the entities in question were divisions of the same corporation; in this one, POSCO, POCOS and PSI are indisputably separate corporate entities, and neither POCOS nor PSI is wholly-owned or controlled by POSCO. Petitioners cite various examples of factors affected by whether or not entities are divisions of another company or are separate entities, and which the Department should take into account if it chooses to ignore the distinction between these entities: Financing costs; tax impacts on working capital; and insurance costs.

Petitioners indicate that in applying the major-input and fair-value provisions, the Department should determine "fair value" for each specific control number ("CONNUM"), based on a comparison of POSCO's sales to POCOS, and POSCO's sales to all unaffiliated companies.

Petitioners argue that if the Department continues to wrongly reject the application of the major-input and fair-value provisions, it must be consistent and find POSCO and Union Steel to be affiliated. If the Department treats POCOS and POSCO as one entity, petitioners argue, it must treat POSCO and Union as affiliated parties, because there is no doubt that Union and POCOS are affiliated.

The POSCO Group argues that the Department addressed these same petitioner arguments in the final results of its second reviews, noting that the POSCO Group (encompassing POSCO, POCOS, and PSI) represents one producer of subject merchandise, that a decision to treat affiliated parties as a single entity requires that transactions among the parties also be valued based on the group as a whole, that transfers of substrate between the group companies should be valued at the cost of manufacturing the substrate, and that because the POSCO Group is one entity for these final results, the major-input rule and fair-value provisions of the Act cannot apply because there are no transactions between affiliated persons. *See Second Review Final Results* at 18430–31.

The POSCO Group argues that it would be inappropriate to apply the fair-value and major-input provisions under the unusual circumstances presented in this case because the Department is reviewing the cost of transactions within a single entity. The provisions apply only to transactions between persons, not when the Department is examining one producer or a single entity. By collapsing the POSCO entity for purposes of the dumping and cost analysis in this proceeding, the POSCO Group argues, the Department has determined that there are no transactions between affiliated persons under the language of the major-input or fair-value provisions of the statute. The POSCO Group argues that this is consistent with the Department's decision in *Crankshafts* at 54614. The POSCO Group argues that the Department's practice of collapsing parties into a single entity for its analysis was a well-known practice that existed before Congress applied the fair-value provision and major-input rules to the COP, and had Congress intended for these provisions to apply to transactions within a collapsed entity, it would have drafted the provisions to cover transactions between "affiliated and collapsed persons." The POSCO Group challenges petitioners' argument that the Department has to apply the major-input and fair-value provisions to a collapsed entity because the regulations do not proscribe their application in such an instance, arguing that the regulations by definition serve as general guidelines, and do not spell out the specific application of every rule contained in the regulations. Furthermore, the POSCO Group argues that 19 C.F.R. § 351.407(b) explicitly

allows for the Department's discretion in the use of these provisions, and the agency that has the most experience and is most expert in analyzing these issues recognizes that there are limits to how closely it should scrutinize transactions within a single collapsed entity. The POSCO Group also challenges petitioners' assertion that there is a continuum of affiliation, upon which collapsed entities reside; the POSCO Group states that under Department case law and common sense, parties are either unaffiliated, affiliated, or collapsed, and that these categorizations are mutually exclusive.

The POSCO Group states that petitioners, in challenging the reliability of the prices paid for inputs transferred among controlled entities, have in fact provided support for the Department's decision to value the inputs based on the objectively verifiable cost of the input. The POSCO Group rejects as irrelevant petitioners' argument that the provisions should be applied because calculating the COP based on POSCO's substrate production costs is difficult and requires numerous allocations between products, cost centers, and divisions.

Regarding the issue of whether or not the application of the major-input rule would result in double-counting, the POSCO Group argues that petitioners mischaracterized the POSCO Group's argument that it raised in the second administrative review. The POSCO Group argues that, contrary to the assertion of petitioners, profit is not to be included in the calculation of cost of production. The POSCO Group states that by using the transfer price from POSCO to POCOS, the Department would be double-counting SG&A and including an artificial element of profit, thereby resulting in more home market sales being found to be below cost than should be the case, and thus affecting the calculation of NV. The POSCO Group states that using transfer prices to value POSCO substrate used by POCOS would result in POSCO's profit and SG&A that are reflected in the sales to POCOS being included in the calculation of costs applied to POSCO sales, given that costs for each CONNUM are a weighted-average across each collapsed company. The POSCO Group argues that this is inappropriate because the statute does not provide for profit to be included as an element of the COP, and the portion that is SG&A would already be in POSCO's reported costs in the COP buildup. Furthermore, the POSCO Group argues, petitioners' methodology would lead to the illogical result of more sales failing the cost test if POSCO's internal sales of substrate earned a higher profit, even though actual costs remain unchanged.

For instances where CV is used as the basis for NV, the POSCO Group argues, the aforementioned use of transfer prices would distort the calculation of profit. The POSCO Group states that, in its calculation of profit for CV, the Department only uses sales that are above the COP. Because, as argued earlier, costs would be overstated were transfer prices from POSCO to POCOS to be used (because of allegedly inappropriate additional amounts of SG&A and profit), the Department would inappropriately discard lower value home market sales, because of the cost test, prior to the Department's calculation of CV profit.

Regarding petitioners' assertion that POSCO and Union be treated as affiliated parties, the POSCO Group argues that petitioners' case brief makes no factual or legal arguments whatsoever concerning why the Department should find POSCO to be affiliated with Union. The POSCO Group notes that the Department, in the second administrative reviews of the orders, rejected this petitioner assertion and the arguments upon which it was based, and concluded that this decision was not inconsistent with its decision not to apply the fair-value and major-input rules to the collapsed POSCO entity.

Department's Position. In our preliminary results in these reviews, as in the second administrative reviews, we treated the entire POSCO Group as one entity for cost purposes. The Department clearly has discretion in its application of the major-input and fair-value provisions, as admitted by petitioners with respect to *Crankshafts.* A more rigid interpretation of the statute, as proposed by petitioners, would imply that the Department could not make a distinction for wholly-owned entities either, as such an entity would also, under the Department's definition, be "affiliated" with its owner.

We recognize that different types of affiliation exist, and that different treatment of such relationships may be appropriate. The Department also rejects the POSCO Group's assertion that adjustments to POCOS costs cannot be acceptable because they affect whether or not POSCO sales pass the cost test. The nature of collapsing POSCO and POCOS is that POCOS's costs affect whether or not POSCO sales pass the cost test, given that each CONNUM's costs are a weighted average of the costs for that product across all collapsed companies.

However, because we are treating these companies as one entity for our analysis, intra-company transactions should be disregarded. As noted in our final results in the second administrative reviews, the decision to treat affiliated parties as a single entity necessitates that transactions among the parties also be valued based on the group as a whole and, as such, among collapsed entities the fair-value and major-input provisions are not controlling.

As noted by the POSCO Group, the petitioners have not in these reviews demonstrated why Union Steel should be considered affiliated with POSCO. The POSCO Group is treated as one entity for various purposes, but they of course maintain their distinction as separate legal entities. Unlike the relationship of POSCO to POCOS, there is no evidence that POSCO or Union control or influence each other's operations, and there is no indication on the record of any type of interaction between POCOS and Union Steel relating to subject merchandise.

Comment 15. Petitioners argue that the POSCO Group failed to incorporate into its submitted costs general and administrative expenses associated with severance benefits. Petitioners cite information in POSCO's U.S. SEC report indicating that POSCO calculated an estimate of its exposure relating to these benefits, which was still in litigation, but under Korean generally accepted accounting principles ("GAAP") did not need to reflect this estimated expense in its financial statements.

The POSCO Group argues that POSCO incurred no current expenses for these unresolved severance benefits claims. The POSCO Group asserts that the Department made an adjustment for severance benefits in the final results of the second administrative reviews because POSCO was required by a final Korean court decision to establish a reserve for additional severance benefits. The POSCO Group argues that in those reviews the Department attributed such expenses to G&A even if they related to years prior to the review in question. The severance benefits that petitioners argue should be included for the third reviews have not been incurred, and POSCO has only a future contingent liability for potential exposure from the unresolved litigation. The POSCO Group argues that under the plain language of the statute the Department is not authorized to adjust POSCO's G&A costs based on such potential exposure, as the costs should be calculated based on records that "reasonably reflect the costs associated with the production and sale of the

merchandise" (*see* section 773(f)(1)(A) of the Act), and the Department is limited to using "a method that reasonably reflects and accurately captures all of the actual costs incurred in producing and selling the product under investigation or review" (SAA at 835).

The POSCO Group argues that the Department did not adjust for similar speculative potential liabilities in another case, where the Department decided that there was no justification for adjusting costs to include potential royalty payments which were speculative, that the respondents were under no legal obligation to pay, and for which the respondents had incurred no current expenses. *See Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memories of One Megabit and Above from the Republic of Korea*, 58 FR 15467, 15479 (March 23, 1993) ("*Semiconductors*").

Department's Position. We agree with the POSCO Group that we should not increase the respondent's costs by the potential expenses in question, as Korean GAAP does not require that they be recorded as expenses, and it has not been demonstrated that the absence of this estimated potential expense is distortive. We further believe that it would be unreasonable to impute to POSCO costs that, depending on the outcome of the litigation, it may not incur.

Union

Comment 16. Petitioners argue that Union failed to provide complete information regarding its U.S. affiliates, by failing to identify in its responses the existence of two different corporate entities, one being the Union America division of DKA (hereinafter "UADD"), the other, which petitioners contend respondent concealed, Union Steel America Inc. (hereinafter "UAC"). Petitioners further argue that Union refused to provide selling expense, financial, or sales information for UAC. Petitioners argue that the Department should apply adverse facts available and make a direct adjustment to Union's export price to account for any expenses incurred by UAC and possible unreported U.S. sales.

Petitioners argue that "[t]hroughout this administrative review, Union Steel hid from the Department the existence of two separate "Union Americas.'" Petitioners argue that the distinction between the two corporate entities, and the existence of UAC as a separate entity, was not made clear until the home market sales verification in May of 1997, by which time it was too late, petitioners argue, for the Department to obtain and verify sales information for UAC specifically.

Petitioners point out that UAC has separate expenses for U.S. operations from those of UADD, and that these separate expenses were not duly reported as indirect selling expenses. Petitioners note that the Department's supplemental questionnaire of April 18, 1997 instructed the respondent to "[r]evise [its] reported selling expenses to include expenses, both direct and indirect, incurred by Union America with respect to Union's U.S. sales."

Petitioners argue that the Department clearly intended to elicit information on expenses specifically tied to UAC, as the supplemental questionnaire followed on petitioners' own notification to the Department, in a letter of April 9, 1997, that UAC's financial statements contained expenses that had not been reported by Union. Petitioners note also that the Department's request asked for copies of each type of report that respondent submitted to Korean or U.S. national or local tax authorities, "for affiliates involved with the manufacture and sale of subject merchandise in the United States and Korea," as well as the chart of accounts for Union America.

Petitioners contend that by not furnishing these documents as requested for UAC in addition to UADD, despite multiple opportunities to do so in the course of the present and the preceding reviews, Union evaded the Department's request and failed to provide the requested information.

Because Union only divulged the separate identity of UAC, as distinct from UADD, during the verification in May, petitioners argue, sales and expense information of the former remains unverified. Petitioners state that, respondent's claims notwithstanding, UAC must have performed functions during the POR, as its financial statements contain expenses and revenues. Petitioners argue that the revenues must be presumed to correspond to sales of subject merchandise.

As a result of Union's failure to provide requested information about UAC's expenses and operations as a separate entity in a timely manner, petitioners argue, the Department was not able to verify data pertaining to UAC, still does not know all the facts concerning UAC, and has been precluded from performing a proper analysis of UAC.

Petitioners argue that because Union failed to report expenses incurred by UAC despite the Department's requests, the Department, as facts available, should presume that any SG&A appearing on UAC's financial statement in 1995 and 1996 were costs incurred within the POR and were directly related to the subject merchandise.

Petitioners note that Union did provide a printout for UAC's monthly sales income statement for June and July of 1995, but claim that there is no evidence that respondent also provided the verifiers with the documentation necessary to test the accuracy of the document, either by testing the underlying computer program or tying the printout to invoices.

Because Union has stated that all its reported sales were made through UADD, petitioners argue, the Department should assume that any sales made by UAC were additional, unreported sales of subject merchandise. The petitioners urge the Department to derive a surrogate quantity based on the weighted-average value of reported sales, and to apply to that surrogate quantity a rate of 64.5 percent, the highest rate from the petition in the LTFV investigation.

In rebuttal, Union argues that it clearly and unequivocally identified its relationship with UAC and provided the Department with requested information pertaining to UAC. Union argues that petitioners have mischaracterized the record, and states that it informed the Department in its response, at the outset of the review, of its corporate relationship with UAC and of UAC's lack of a role in the manufacture and sale of subject merchandise. Union further argues that the Department verified that UAC and UADD are separate corporate entities and that the Department confirmed that UAC has no involvement in the manufacture of subject merchandise. Respondent argues that for this reason, it had no information to report with regard to any purported selling activities of the subject merchandise by UAC, and that the Department should dismiss petitioners' claim.

Referring to its submission of October 1995 submission and other documents, including a verification report, in connection with the preceding review, Union argues that the Department clearly understood the distinction between UAC and UADD at least as early as October 1995. In the current review, Union argues, it discussed the corporate relationship between Union and UAC at page 5 of its response, where it stated that UADD had taken over the selling functions for U.S. sales of subject merchandise, and that UAC continued to exist as a separate corporation but had no activity relating to the manufacture and sale of the merchandise under review.

Union also points to UAC's 1995 audited financial statement, submitted with Union's Section A response, and to UAC's 1996 statement, provided at the Korean verification, as further evidence of timely disclosure of the corporate identity of UAC and of UAC's complete disassociation from the manufacture and sale of the subject merchandise. Thus, respondent argues, it had placed on the record of the present review in October of 1996 the information which petitioners claim it withheld, ten months prior to the U.S. sales verification in August of 1997.

With regard to whether the information concerning UAC was duly reported, Union argues that there is no reason under the statute that Union need submit any further information regarding UAC, because it is not involved in any way in the production or sale of subject merchandise. Concerning verification, Union argues that the Department did verify that UAC in fact does not produce or sell subject merchandise. Union cites in this regard the Department's Korean verification report, which addresses the assignment of UAC's former functions to UADD and the inactive status of UAC.

Regarding whether UAC made sales of subject merchandise, Union argues that the record shows that all such revenue had been earned on or before June 30, 1995, prior to the POR, as evidenced by UAC's financial statements submitted with its response and at the Korean verification.

Concerning whether the general expenses which UAC showed in its income statement should be allocated to its U.S. sales in the present review, Union argues that because UAC's involvement with sales of subject merchandise ended with the second review, these general expenses, which it characterizes in any case as "trivial," are not associated with third review sales of subject merchandise.

Department's Position. We agree with Union. The record demonstrates that Union revealed the existence of the two corporate entities in question and did not understate its reportable expenses. On the basis of Union's submissions and our verification thereof, we are satisfied that Union shifted the responsibility for selling subject merchandise in the United States from UAC to UADD, and that the former was not involved with such sales during the POR.

Comment 17. Petitioners argue that there are numerous instances throughout Union's sales database in which it failed to report U.S. warehousing expenses. The first such omission which petitioners allege concerns sales for which the terms were reported as being "delivered." For all these sales, petitioners argue, a time gap between reported entry date and date of shipment from the dock signifies that respondent must have incurred, and must have failed to report, warehousing or demurrage expenses.

The second omission which petitioners allege Union made concerns warehousing expenses for sales with terms of sale of "W&D," *i.e.*, "warehoused and delivered to customer site." Petitioners note that for a certain subset of this type of sale, there is an apparent inconsistency: when inland freight expenses were incurred in the United States, and when merchandise apparently was not picked up for several or more days, warehousing expenses must also have been incurred and yet were not reported.

The third omission which petitioners allege concerns sales with terms different from those mentioned above, and with delays between entry dates and shipment to the U.S. customer, but for which Union did not report any warehousing or demurrage expenses. Petitioners argue that these sales must have involved either demurrage or warehousing expenses. Petitioners further argue that respondent failed to provide proof, at verification, that such expenses were not in fact incurred.

Petitioners argue that for all sales with a gap between entry and U.S. shipment dates, where no warehousing or demurrage and handling expenses were reported, the Department should calculate a facts available adjustment, based on the highest per-diem demurrage and handling expense which the company reported in its response. Further, petitioners argue that for all sales with terms of W&D, the Department should, as facts available, account for the possibility that warehousing expenses might have been incurred after the second shipment date (which in fact occurred for one particular transaction) by making a downward adjustment to reported U.S. price based on the highest reported warehousing expense.

In rebuttal, Union argues that it fully reported its U.S. warehousing and inland freight expenses, that petitioners are factually incorrect, and that the Department verified the expenses in question to the full extent it considered necessary, finding no discrepancies. Union notes that the Department found no unreported expenses of the type imagined by petitioners. Union argues that the Department, not petitioners, determines what constitutes adequate verification, that petitioners err in thinking verification procedures and documents are limited to those discussed in the report, and that the explanations provided at the verification were included in the report precisely to answer petitioners' concerns on these subjects, as expressed prior to the verification.

Concerning gaps between entry and invoicing to the U.S. customer for certain sales, Union states that the free warehousing which it is allowed accounts for nearly all the sales in question. For one of the sales with a lengthy gap of this type, Union argues, the Department investigated and found that there were special circumstances that led to the greater time period with no warehousing costs.

As for sales with W&D terms, but no warehousing expense indicated, respondent states that the freight amounts which appear for the 11 sales discussed by petitioners corresponded to actual freight expenses, that petitioners are wrong to suppose that warehousing expenses must have been incurred, that the expenses for these sales were correctly reported, and that warehousing expenses were not incurred for them.

Department's Position. We agree with Union that there is no evidence that it failed to report the expenses in question. We were aware of petitioners' interest in establishing that warehousing and inland freight expenses were reported fully and properly, and their interest in understanding why such expenses were not incurred in particular instances. Accordingly, at verification, we examined relevant records with particular attention to these questions. We found no evidence that Union failed to report warehousing and inland freight expenses as incurred. Union's explanations and the documentation we examined at verification are both consistent with the response data. We verified that free warehousing was allowed for certain sales as Union claimed. For the sale with an especially long gap, we examined the documents supporting Union's explanation of the special circumstances. Similarly, for the sales made under W&D terms for which respondent reported no warehousing expenses, we verified that the expenses were correctly reported and that no warehousing expenses were incurred which were not reported.

Comment 18. Petitioners argue that Union failed to report U.S. inland freight expenses for some U.S. sales. Petitioners' point concerns two data fields for this category of expense, one called INLFPWU (hereafter "P"), the other INLFWCU (hereafter "C"). Petitioners state that the Department's questionnaire called for reporting freight expenses as follows.

For CEP sales, the P column should show freight expenses incurred on shipments from the U.S. port of entry to the affiliated reseller's U.S. warehouse or other intermediate location, and the C column should show expenses incurred on shipments from the affiliated U.S. reseller to the unaffiliated U.S. customer. For EP sales, petitioners argue, the P column should show expenses from the port of entry to an intermediate location and the C column should show expenses incurred on shipments from the port of entry or an intermediate location to the unaffiliated U.S. customer.

Petitioners note that Union claimed to conform to the above requirements in its initial response, and did report that the P column contained amounts for "occasional cases in which a customer requests delivery to a warehouse or its own facility," and the C column contained either freight from port to customer, when sales terms were "delivered," or freight from a warehouse to a customer's location, when sales terms were "W&D." However, petitioners argue, there are inconsistencies and omissions in Union's reporting of freight expenses for certain sales for which the terms were "DEL" (delivered) and for certain others for which the terms were "W&D" (warehoused and delivered). Petitioners argue that certain of respondent's U.S. sales which would be expected to show expense amounts in both the C and the P fields by virtue of the terms of sale reported, do not show expense amounts in the C field.

Petitioners note that the Department requested, in a supplemental questionnaire, that Union report charges for shipment to the customer where the terms indicated delivery to the customer was provided. Petitioners take issue with Union's answer to that request, which was that for those sales for which no inland freight was reported in the C column, inland freight was reported in the P column. Petitioners note that this answer contradicts the response, in which Union held that all sales for which the terms were "DEL" showed freight expenses reported in the C field. Petitioners argue that it remains totally unclear what Union has reported with respect to freight expenses for sales with delivery terms of "DEL."

The freight expense reporting for sales with "W&D" terms, petitioners argue, is similarly confused. Petitioners suggest that record evidence strongly suggests that Union simply neglected to report freight expenses incurred in delivering merchandise from the warehouse to the customer. Petitioners assert that Union was unable to provide documentation at verification to show that it fully reported all U.S. inland freight expenses. Petitioners question why certain sales with "W&D" terms have freight reported in the C column but not the P column.

Petitioners argue that because respondent failed to provide the Department with a logical, coherent, and consistent explanation for its failure to fully report U.S. inland freight expenses, and failed to produce evidence at verification to support its claims, the Department should apply adverse facts available for unreported U.S. inland freight expenses. Petitioners suggest that the Department should apply the highest reported corresponding per-ton rate incurred to sales where terms are "W&D" and where no expense amount appears in either the C or P columns. For sales with terms marked "DEL," petitioners argue, and where Union did not report any amount in either the C or P columns, the Department should insert the highest reported corresponding per-ton rate. Finally, petitioners argue that in instances where a significant number of days elapsed between entry and shipment to the customer, the Department should make an adjustment for freight to the warehouse, and from the warehouse to the customer, based on the highest reported rate for each.

In rebuttal, Union argues that of those sales which petitioners highlight as having terms that "should" imply freight, most had "DEL" terms, *i.e.*, were delivered to a warehouse, and did have freight reported in the "P" field, indicating that Union delivered the merchandise to a warehouse. In its response, Union stated that "for the occasional cases in which a customer requests delivery to a warehouse or its own facility, U.S. inland freight has been reported on a transaction-by-transaction basis."

For the other sales which petitioners suggest ought to have borne freight expenses, those with "DEL" terms, Union argues that it reported freight in the "C" field. Union explains that the choice of field depended on whether a sale was delivered to a warehouse or to the customer's site.

Union states that the only other sales about which petitioners raise concerns in their brief are transactions with "W&D" terms but no freight in the "C" field. Respondent states that these were simply picked up by customers from the warehouse, as called for in the terms of sale. Union further states that nothing in the record would support a reversal of the Department's verification findings.

Union answers petitioners' concerns on the verification of its sales transactions by observing that petitioners cannot cite one instance of Union failing to provide requested documents or other information, nor any evidence of unreported expenses for any of the sales examined at verification. Union characterizes petitioners' concerns in this regard as speculation.

Department's Position. We agree with Union. We verified that these expenses were fully reported, and the record of the review is consistent with Union's submissions and explanations. Petitioners' concerns about the possibility of unreported freight and warehousing expenses are not supported by any instances of verification discrepancies or documentation problems.

Comment 19. Petitioners raise the following concerns with respect to six transactions which the Department traced at verification:

- Union failed to prove that it did not incur certain warehousing or demurrage and/or inland freight expenses;
- Union failed to provide adequate documentation of its claims and explanations as to sales terms;
- documentation which Union provided at verification raises the possibility that additional expenses for further processing may have been incurred but not reported;
- there are apparent inconsistencies between the reported sales terms and the reported expense amounts; from the reported sales terms it would appear some expenses were incurred but not reported.

Union answers that petitioners' concerns are again merely speculative. Union further notes that petitioners' concerns come late, since the home market verification report in question was available over two months prior to the U.S. verification, so that petitioners could have requested further investigation of these matters at that time.

Department's Position. We agree with Union that petitioners' concerns are speculative in nature and are not supported by the record evidence, including our verification findings. We are satisfied with Union's explanations, in its rebuttal brief, of the particular facts and circumstances of the sales in question. The response data and the documentary evidence from verification are consistent with Union's explanations in its rebuttal brief and with its response submissions.

Comment 20. Petitioners argue that Union's U.S. affiliate, UADD, plays an active and substantive role in the U.S. sales process, that this role is not only greater than that of a mere processor of

documents, but greater than that of Union itself with respect to U.S. sales. Petitioners argue that the Department should therefore classify all of Union's U.S. sales as CEP sales, rather than EP sales, and, consistent with that action, deduct all of Union's direct selling expenses, indirect selling expenses and allocated profits from the reported gross unit price when calculating CEP.

Petitioners summarize the three criteria for EP sales, as distinct from CEP sales, as follows: (1) The merchandise is not inventoried in the United States; (2) the commercial channel at issue is customary; and (3) the selling agent is not substantively more than a processor of sales-related documentation, or a communications link. Petitioners argue that all three of these criteria must be satisfied for a sale to qualify as an EP sale, then argue that in this case the Department must focus on the last of the three, *i.e.*, the role of the U.S. affiliate in the U.S. sales process, and urge the Department to do so in the context of Union's customary selling practices. Petitioners argue that Union's U.S. affiliates perform significant selling functions in the United States and that its U.S. sales must be classified as CEP sales.

Petitioners cite Department precedent and record evidence on the importance of the role of Union's U.S. affiliates in the U.S. sales process, and argue that the activities performed by these affiliates parallels those performed in *German Plate* by Francosteel, the U.S. affiliate of the German respondent (Dillinger). Petitioners summarize the activities performed by Francosteel as these were evaluated by the Department in that review, citing (1) Price negotiation and maximization, (2) establishing contact with the customer, (3) providing credit, (4) obtaining purchase orders, (5) invoicing, (6) taking title, and (7) acting as the importer of record. Petitioners state that the Department found in that review that Francosteel performed the above functions and was thus more than a mere processor of sales documents and communications link. Petitioners argue that in the instant review Union's U.S. affiliate performs even more functions than Francosteel.

Petitioners cite a home-market sales verification exhibit, in which only intra-corporate transfer prices appear, and argue that this exhibit shows that UADD negotiates price without the Korean parent's involvement or its knowledge of the prices that were ultimately charged to the unaffiliated U.S. customers. Petitioners argue that at both the home-market and the U.S. verifications, the instances which Union provided as evidence of the Korean parent's control and involvement in the setting of prices paid by customers were essentially hand-picked and have not been shown to reflect the normal sales process. Furthermore, petitioners argue, these examples fail to document the parent's role in price-setting even for these selected examples. Petitioners argue that the exhibits thus supplied show only rejections based on limitations of production capacity, or unsatisfactory intra-corporate transfer prices.

Petitioners argue that the U.S. verification report, which mentions further examples of sales that the verifiers examined and where the parent initially disapproved certain terms, quantities, and prices, does not make clear what examples were examined, since the verifiers did not take exhibits for these sales. Petitioners suggest that these examples may be sales that were refused on the basis of transfer price or production capacity, not because of the price to the ultimate U.S. customer.

Petitioners assert that aspects of UADD's commissionaires' roles, and the role of UADD in appointing commissionaires, as reflected in commissionaire agreements, shows that UADD has authority over the sales process, and that UADD establishes the first contact with U.S. customers. Petitioners argue that the gap in timing between UADD's payment to Union in Korea and UADD's collections from U.S. customers, shows that UADD provides credit to U.S. customers.

Petitioners argue that UADD is responsible for handling purchase orders obtained directly from its U.S. customers, that UADD's commission agents, according to their contracts with UADD, may participate in the sales process actively, and that the commissionaires work directly for UADD. Petitioners also argue that the commission agent agreements contain clauses suggesting that UADD can make pricing decisions. Petitioners argue that UADD invoices its U.S. customers. Petitioners argue that UADD takes title to the subject merchandise, acts as the importer of record, and in so doing takes on a role so significant that, like Francosteel in the Dillinger review cited above, it rises above the role of a mere communications link and processor of sales-related documentation.

Petitioners argue that UADD's selling functions far outweigh those performed by Union itself, "which appear not to include anything more than producing and shipping the merchandise." Petitioners cite the following functions which UADD performed in the POR:

- Certain price agreement negotiations;
- Processing sales and import documents;
- Processing certain warranty claims;
- Paying customs and antidumping duties;
- Arranging warehousing and transportation at the customer's request;
- Accepting and reselling returned merchandise; and
- Engaging in communications with, and acting as point of contact for, U.S. customers.

Petitioners further argue that based on certain accounting records UADD "may carry inventories of the subject merchandise." Petitioners cite also some additional selling functions, which were "revealed" to have been performed by UADD in the prior review, pertaining to market research, planning, finding U.S. sales, negotiating purchase terms, maintaining customer relations, procurement services, and arranging and paying for post-sale warehousing and transportation to customers.

In rebuttal, Union argues that petitioners fail to come up with any new arguments on this issue, severely distort the factual record, mischaracterize Union's sales process, and rely on sheer speculation. Union points to the final results of the first and second reviews, in which the Department rejected the same arguments by the petitioners. Union also points to the verifications, particularly the U.S. verification, of which the report discusses the Department's examination of the authority which the Korean-based Export Team exercised over pricing and sales terms. Union states that nothing has changed regarding the assignment of selling functions between the Korean and U.S. affiliates. Union reviews the sales process as documented in its response and the verification report, and points to record evidence supporting the claim that UADD has no price negotiating ability.

Union further argues that no changes in the applicable law governing EP sales have emerged to alter the Department's position. Union contends that *German Plate* had an unusual aspect, in that the affiliated sales intermediary engaged in extensive price negotiations. Union cites Exhibit 3 of the U.S. verification report which shows an instance where Union disapproved a particular price and dictated a price different from that requested by the U.S. customer, via UADD. Union cites the U.S. verification report's description of the sales process as it relates to the determination, by the Export Team in Korea, of the final price to the unaffiliated U.S. customer. Union distinguishes these facts from those in

German Plate, where the Department found the foreign manufacturer's role in the sales process to be minimal, whereas the affiliated sales intermediary essentially negotiated all sales. Union points to the Department's finding at verification that the Union controlled all the terms of sale, price and otherwise, and notes that the Department reviewed four months of correspondence to test the accuracy of Union's statements that it approves prices for all sales. Union notes that the Department found nothing inconsistent with the responses, and that the Department found that Union sometimes rejected sales based on price and other terms.

Concerning selling activities, Union notes that information on the record in this review confirms that, as the Department found in prior reviews, the commission agreement which establishes commission rates was drafted and controlled by Union. Union disputes petitioners' assertion that for at least one U.S. customer UADD has authority to adjust prices, and cites to its questionnaire response which states that Union itself retains that authority in full.

Union argues that UADD's role in accepting payments from U.S. customers, and arranging for the extension of credit to them, is in keeping with the Department's definition of a sales processor. Regarding warehousing and transportation, Union retorts that UADD arranges for these services but does not directly provide them. Concerning warranty claims, Union confirms that UADD processes these, but notes that Union sales personnel in Korea decide all claims. Union similarly confirms that UADD receives purchase orders, but explains that, as the Department verified, it then forwards these directly to Union, which is responsible for approving the sale or proposing alternative terms or prices.

With respect to the other selling functions enumerated by petitioners, Union confirms that UADD invoices U.S. customers, takes title to merchandise, pays duties and fees, and serves as a communications link and point of contact for U.S. customers. All of these functions, Union argues, are in keeping with the Department's definition of a sales processor, as discussed in the final results of the prior review.

Concerning instances when UADD accepts and resells returned merchandise, Union states that such instances have properly been reported as CEP transactions.

Department's Position. We agree with petitioners that Union's U.S. sales should be treated as CEP transactions. In the final results of the prior reviews, in order to determine whether sales made prior to importation through Union's affiliated U.S. sales affiliate (UADD) to an unaffiliated customer in the United States were EP or CEP transactions, we analyzed Union's U.S. sales in light of three criteria: (1) whether the merchandise was shipped directly from the manufacturer (Union) to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling affiliate (UADD) was limited to that of a processor of sales-related documentation and a communications link with the unrelated U.S. buyer. We concluded that UADD was no more than a processor of sales-related documentation and a communications link, and classified Union's U.S. sales as EP. *Second Review Final Results* at 18439.

As explained above in the "Fair-Value Comparisons" section of this notice, to ensure proper application of the statutory definitions, where a U.S. affiliate is involved in making a sale, we normally consider the sale to be CEP unless the record demonstrates that the U.S. affiliate's involvement in making the sale is incidental or ancillary. The totality of the evidence regarding Union's sales process demonstrates it is Union's role that is ancillary to the sales process, and not that of UADD.

We agree in large part with petitioners that UADD fulfills several of the criteria cited in *German Plate*, including price negotiation, initial customer contact with respect to individual sales, credit, purchase orders, invoicing, title and importation. We agree that the verification results are not dispositive. The few instances which Union offered of disapproved prices and terms do not establish that UADD's involvement in the selling functions was ancillary. The authority which Union's export team exercised over the final terms does not amount, in the end, to placing all of the primary selling function in Korea. Indeed, the paucity of evidence that the home office played any role in the sales process reinforces petitioners' argument as to UADD's active role, as does the fact that UADD employed the services of independent agents in the United States. Therefore, we concur with petitioners that UADD's role in the sales process is more than ancillary.

Union's argument that the U.S. affiliate in *German Plate* engaged in extensive price negotiations is true, but does not nullify the fact that UADD is significantly involved in price negotiations and the other selling functions discussed above from the onset of client contact in each sale. We also note that the higher proportion of indirect selling expenses incurred in the United States in connection with Union's U.S. sales of subject merchandise, as opposed to those incurred in Korea, supports petitioners' contentions. Further, the existence of significant selling expenses in the United States itself belies Union's claim that the role of its U.S. affiliate was not meaningful. *See* Union's February 21, 1997 response at Volume II, Exhibit C–20. For the foregoing reasons, we have classified Union's U.S. sales as CEP transactions in these final results.

Comment 21. Petitioners argue that the Department should make several adjustments to Union's COP and CV data. Because of Union's affiliation with POSCO, petitioners argue, the Department should make an adjustment for Union's purchases of substrate from POSCO to ensure that they reflect fair value and are above POSCO's COP. Petitioners argue that in the preliminary results the Department wrongly concluded with respect to POSCO that the fair-value and major-input provisions of the statute do not apply to POSCO's affiliated transactions with POCOS; if the Department retains this approach, petitioners argue, then to be consistent it must also consider Union to be affiliated with POSCO.

Petitioners argue that the substrate which Union purchases from POSCO represents a major input and so must be assigned a value equal to the highest of (1) the transfer price from POSCO to Union, (2) POSCO's production cost, or (3) the market value. Invoking this last provision, petitioners argue that the Department should adjust Union's substrate costs by the difference between the price it paid POSCO and market value, as evidenced by purchases from unaffiliated entities.

Addressing the issue of whether POSCO and Union are affiliated, Union cites to the final results of the second review, where the Department determined that POSCO had not been shown to control Union. Union argues that petitioners offer no new evidence to buttress their presumption that Union and POSCO are affiliated or to cause the Department to revise its view on this point.

Department's Position. We agree with Union. We examined the basis for petitioners' concerns about the possibility of control of Union by POSCO in the prior review. We found insufficient evidence then in support of petitioners' assertion that the business relationship between POSCO and Union satisfies the Act's new affiliation criteria

at sections 771(33)(E→G). *Second Review Final Results* at 18417–18. No new evidence or argument has been offered in these reviews, and we again find that petitioner's assertion is not supported; therefore, for purposes of these final results, we have again treated Union and POSCO as unaffiliated. Accordingly, our position with regards to the fair-value and major-input provisions of the statute is that these do not apply.

Comment 22. Petitioners argue that the Department should reject Union's change in depreciation methodology because it is contrary to longstanding Department precedent and practice and is contrived. Citing the Department's position in *Semiconductors*, as well as the decision of the CIT in *Micron Technology, Inc. v. United States*, CIT Slip Op. 95–107 (June 12, 1997) ("*Micron*"), petitioners argue that a similar fact pattern is in evidence, that the change in methodology in accounting for depreciation expense understates respondent's fixed overhead, that the Department should reject the change for the same reasons as in *Semiconductors*, and increase respondent's fixed overhead amounts by a specific percentage rate. The petitioners suggest a rate, which they calculate on the basis of net asset value of the assets in Exhibit 9 of the Korean verification report, multiplied times a standard flat annual depreciation rate for assets with a remaining useful life of eight years. Petitioners argue that the Department should use the difference in percentage derived from this example and apply the differential to all of Union's fixed overhead expenses.

In rebuttal, Union argues that petitioners' suggested method would double-count depreciation expenses, and notes that its auditors and the Korean tax authorities both approved the changes in depreciation methodology. Union argues that petitioners provide no argument in support of their thesis that it is distortive to depreciate the remaining value of assets when such a change in method is adopted.

Union argues that if the Department wishes to use costs based on a double-declining balance method, the proper costs to use would be those contained in Union's supplemental response, which were verified, rather than those which would be obtained by relying on the straight-line method costs which were submitted later. Union also notes that if the Department wishes to use the later, straight-line data, petitioners' suggested ratio is too high, and would need to be decreased to reflect the actual proportion of depreciation within fixed overhead. Union supplies the revised factor which it claims the Department would need to make the adjustments using the correct ratio of depreciation to total fixed overhead expense.

Department's Position. We agree with petitioners that Union's change in depreciation methods understates overhead and that there are similarities in the instant case with the facts of *Semiconductors* and the related court decision, *Micron*. We also agree that, even if Union's change in methodology is made according to local accounting standards, the Department may still find the change to be distortive and decline to use the revised costs. We note that the CIT in *Micron* found that:

> Commerce was entirely justified in concluding that Samsung's methodology, as implemented, distorted depreciation expense during the POI to the extent that Samsung used the full useful life of the asset rather than the remaining useful life at the time of the change in depreciation method.

Union's adoption of a new depreciation method similarly would entail a restatement of asset values and depreciation expenses over multiple years, including years for which an investigation and subsequent reviews have already been conducted. The restatement would therefore also mean that "greater costs were attributed to products manufactured before the change than subsequent to the change." *Semiconductors* at 15479. Thus, here, as in *Semiconductors*, we find that "the basis used for the financial statement, even if stated in accordance with Korean GAAP at the time of the change, would be distortive for purposes of our antidumping analysis." *Id.*

Accordingly, we have determined not to accept Union's reported depreciation expense. Instead, for purposes of these final review results, we applied petitioners' suggestion, in part, by compensating for the accounting change; we also took into account Union's concern that we reflect the accurate proportion of depreciation within overhead, and used the amount indicated by multiplying Union's fixed overhead expenses times the ratio of straight-line (non-restated) depreciation in fixed overhead.

Comment 23. Petitioners argue that the Department should reduce Union's claimed offset for revenue from the sale of scrap, which Union based on theoretical amounts related to its production yield ratios, to reflect instead Union's actual scrap generation rate. Petitioners base their argument on verification results which indicated, petitioners argue, that the recovery rate which Union used was not accurate. Petitioners suggest a percentage by which they urge the Department to adjust the scrap offset to reflect the difference they describe.

Union answers that the difference in the numbers compared by petitioners can be accounted for by changes in work-in-process ("WIP") inventory. Union argues that scrap temporarily stored on the floor, prior to entering inventory, would not be accounted for immediately as it is produced, and that any change in the amount of scrap WIP inventory between the beginning and the end of the cost reporting period would not be captured in the production figures reviewed at verification. Union argues that the Department's test was a reasonableness check, not an attempt to recalculate the quantity of scrap through another means, and Union believes that the amount noted at verification falls within reasonable limits for such a by-product.

Alternatively, Union argues, if the Department determines it should reduce the reported scrap quantity, then it should adjust yield rates simultaneously, multiplying each by a factor of 0.84, then re-compute COP and CV based on the revised scrap and yield totals.

Department's Position. We agree with petitioners that it is more appropriate to use the corrected scrap recovery rate as discovered at verification. Accordingly, for these final results, we have adjusted the scrap rate as petitioners suggest; we have also revised the yield rate in keeping with Union's concern regarding the need for consistency in these two factors.

Comment 24. Petitioners argue that, as in the second review, the Department should revise Union's submitted costs to account for differences between submitted costs and actual costs of manufacturing (costs based on Union's financial statements).

Union argues that the difference in costs is less than petitioners assert once the change in accounting methodology is accounted for. Union also argues that the difference between the two sets of costs, *i.e.*, its questionnaire response costs and its financial statement costs, are trivial, and the Department's tests at verification were only to determine the reasonableness of Union's submissions.

Department's Position. We agree with petitioners. The record shows that there is a noticeable difference between the actual manufacturing costs (from the audited financial statements) and the manufacturing costs submitted by Union. The difference is not trivial since we disagree with the change in depreciation method which Union argues would narrow the cost difference. Our verification test is not

only a test of the reasonableness of a respondent's submissions but also a check on accuracy. When we find, as we did here, that submitted costs are less than actual costs, and when the information which would allow us to use the more accurate cost figure is on the record and is easily incorporated into our analysis, we have no reason not to use the more accurate figure. Accordingly, we have applied the corrected cost figure as suggested by petitioners.

Comment 25. Petitioners argue that the Department should account for the difference between costs which Union incurred during its fiscal period and the higher costs it incurred during the POR. Petitioners note that the Department allowed Union to report costs based on its corporate record-keeping period provided that this methodology did not distort the calculation of costs. Petitioners argue that the analysis which Union provided demonstrates that its methodology has a "noticeable" impact on the calculation of costs, reducing them by a percentage difference which petitioners assert is significant, unlike the difference in the same costs in the prior review. Petitioners urge the Department to revise Union's submitted costs to include a specific adjustment for the effect of Union's use of its record-keeping period.

In rebuttal, Union argues that for the sake of consistency with past practice, and relative ease of submission and of verification, Union requested that the third review cost reporting be on the same basis as the prior reviews, July through June, a difference of one month from the August-July POR. Union argues that it gave evidence showing that this method would not distort costs and that the Department did not find the method distortive, though Union concedes that the Department also later requested it to submit its costs for the POR itself rather than for the fiscal year.

Union argues that petitioners are wrong in at least two respects, since they have not supported their claim that the change in reporting period had a noticeable effect on submitted costs, and since the Department concluded previously that the choice of periods was not distortive. Concerning the magnitude of the difference in average unit costs, Union explains that it could be due to a change in the product mix, even if all unit costs remained unchanged. Union argues that the case has proceeded on the basis that the change in periods was not distortive, and petitioners cannot now claim differently.

Department's Position. We agree with petitioners that the POR costs are indeed higher than the fiscal-year costs, as is shown by Union's own information. When we allowed Union to report on the basis of a different period we also requested the information which would permit us to compare the reported numbers to those of the POR and to apply the latter if these were different enough to affect the results of our analysis, as we found they were. We disagree with Union's argument that petitioners failed to support their claim that the change in reporting period had a noticeable effect, and we disagree with the characterization of the change as less than noticeable. Finally, the argument that the difference in costs could have arisen from a difference in product mix is unpersuasive: the potential effect of the change is noticeable, and we find it is therefore more reasonable to revert to the actual POR data. Accordingly, for purposes of these final results, we based our margin calculations on the POR costs rather than on the fiscal period costs.

Comment 26. Petitioners argue that the Department should revise Union's submitted interest expense to account for expenses incurred by the Dongkuk Steel Mill ("DSM") group. Petitioners argue that it is the Department's longstanding policy to employ the financial expense incurred by the consolidated entity, not the unconsolidated entity, in calculating the interest expense component of COP and CV. Petitioners note that the Department obtained the necessary consolidated rate information from Union but failed to apply it in the preliminary results. Accordingly, petitioners argue that, for purposes of these final results, the Department should substitute the consolidated rate for the rate initially supplied by Union.

In rebuttal, Union concedes that it is Department policy to use the interest expense of the entity at the highest level of consolidation, but argues that Union is not further consolidated with any other entity, and its financial statements represent the highest level of consolidation. Union notes that at the petitioners' request, it provided the financing costs for DSM and DKI in its supplemental response, but that this does not signify that Union's interest costs are in any way consolidated with those of the other two firms. Union argues that the Department correctly applied its practice in the preliminary results and should continue to do so in the final results.

Department's Position. As in the prior review, where the same issue arose (though in the prior review the issue concerned all general and administrative expenses ("G&A") rather than merely interest expenses), we agree with petitioners. The ownership and affiliation ties at issue have not substantially changed. It is our practice to include a portion of the G&A expense incurred by the parent company on behalf of the reporting entity. We disagree with Union's arguments that Union's financial statements reflect the highest level of consolidation. Since Union is affiliated with the DSM group, we agree with petitioners that a portion of the interest expenses for the DSM group should be allocated to Union's costs. Accordingly, for these final results, we applied the interest expense ratio suggested by petitioners.

Comment 27. Petitioners note that the Department recently changed its policy regarding the calculation of interest expense for CV, and no longer includes imputed credit expenses or inventory carrying cost expenses in its calculation of CV, but uses the same interest expense ratio as it does for COP. In support of this argument, petitioners cite *Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 61 FR 69067, 69075 (December 31, 1996) and *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order In Part: Dynamic Random Access Memory Semiconductors of One Megabyte or Above from the Republic of Korea*, 62 FR 39809, 39822 (July 24, 1997). Accordingly, petitioners argue, for the final results the Department should ensure that the interest expense ratio used for CV reflects this new policy. Union offers no rebuttal.

Department's Position. We agree with petitioners and have amended our calculations accordingly for these final results.

Comment 28. Petitioners argue that the Department asked Union to "provide an analysis that compares year-end adjustment amounts provided in [its] responses to the amounts reported in [its] audited financial statement," but that the Union failed to provide this analysis. Petitioners note that such an analysis would have enabled the Department to determine whether the submitted costs reflect the year-end adjustments which are included in the financial statements, but which are not always incorporated in the normal accounting system. Petitioners argue that since Union neglected to provide the analysis, "the Department should apply facts available and increase Union's submitted costs by 8 percent (or 1/12)."

In rebuttal, Union argues that the July 1995–June 1996 costs which it

submitted included the full year-end adjustments for 1995 in accordance with Department practice. Union later supplied audited year-end 1996 adjustments when these became available. Union argues that petitioners have not claimed any significant changes from 1995 to 1996 in kind or in number, other than the change in depreciation method, to which petitioners have objected. Union argues that petitioners' claim that it failed to provide relevant information has no support in the record.

Union further points out that the Department verified its responses, including 1996 year-end adjustments, with its full cooperation.

Department's Position. We agree with Union. Union provided the information we requested as it became available, and the year-end adjustments in question were duly verified. We see no need for the application of facts available in this instance.

Comment 29. Petitioners note that in its deficiency questionnaire, the Department requested that Union revise its submitted G&A and interest expense calculations to make them consistent with the Department's final results in the second administrative review, with respect to the scrap revenue offset. Petitioners argue that Union failed to do so, causing a critical inaccuracy in the Department's analysis. Petitioners urge the Department to apply facts available and to use the financial statement entries for "Sales—Other" and "Non-operating Income " Miscellaneous" as offsets to the cost of sales.

Union argues that to be consistent with the Department's calculation of costs on a per-unit basis, a different, lower, adjustment would be called for, but that, if the Department begins adjusting the denominator for the cost of manufacturing, it must also take into account the fact that the denominator includes an offset for duty drawback, which unit costs do not include. Union suggests that there is a rough balance between the scrap and drawback adjustments, but that if both are made, the cost of manufacturing would decrease.

Department's Position. We agree in part with each party. We agree with petitioners that Union failed to make the adjustments to the G&A and interest expense calculations we requested. We agree with Union that for consistency, all relevant factors must be duly reflected in the revised expense ratios. For these final results, therefore, we have used revised expense ratios that are consistent with the prior review and which incorporate the relevant adjustments suggested by Union.

Comment 30. Petitioners urge the Department to increase Union's submitted G&A expenses to take account of corporate overhead expenses of DSM, as in the final results of the second review. In rebuttal, Union argues that nothing in the record suggests that DSM provides goods or services to Union, and that petitioners' argument should be rejected.

Department's Position. We agree with petitioners. It is our practice, as we stated in the final results of the prior reviews, and as mentioned above in the Department's Position on Comment 26 in connection with interest, to include a portion of the G&A incurred by the parent company on behalf of the reporting entity. For these final results, therefore, we allocated a portion of DSM's G&A to Union's G&A.

Respondents' Comments

Comments by Dongbu and Union

Comment 31. Dongbu and Union argue that the Department erred in using the contract date, rather than the commercial invoice date, as the date of sale for their U.S. sales. They base this argument on several considerations. First, they argue that the Department's stated rationale for using the contract date as the date of sale is fallacious. In the preliminary results the Department stated:

> The questionnaire we sent to the respondents on September 19, 1997 (*sic*) instructed them to report the date of invoice as the date of sale; it also stated, however, that "[t]he date of sale cannot occur after the date of shipment." Because in these reviews the date of shipment in many instances preceded the date of invoice, we cannot use the date of invoice as the new regulations prescribe.

Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea; Preliminary Results of Antidumping Duty Administrative Review, 62 FR 47422, 47425 (September 9, 1997) ("*Preliminary Results*"). Dongbu and Union state that this rationale is factually incorrect. They state that for Dongbu there are no instances in which shipment date preceded invoice date. As for Union, it acknowledges that only three line items in the U.S. data base have a shipment date prior to the invoice date, but state that this reporting was a trivial data input error which the Department should ignore. Furthermore, it states that these three line items all pertain to a single shipment, and that the reported shipment date preceded the invoice date by only one day.

Second, Dongbu and Union state that using the contract date as the date of sale was inconsistent with the Department's regulations and recent case law, citing 19 CFR § 351.401(i):

> In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

Dongbu and Union argue that the invoice date is presumptively the date of sale, and that exceptions to this presumption must be narrowly drawn. Furthermore, they argue that the preamble to the regulations makes explicit the Department's intent to restrict the exceptions to the presumption when it says that the regulations put parties "on notice" that "in the absence of information to the contrary, the Department will use date of invoice as the date of sale." *Final Rules* at 27349.

Furthermore, they argue that recent case law demonstrates the Department's intention to restrict the exceptions to the presumption. As an example, they cite *Stainless Steel Wire Rod from India; Final Results of New Shipper Antidumping Review,* 62 FR 38976 (July 21, 1997) ("*Wire Rod from India*"), in which the Department rejected a petitioner's argument that the Department should use the purchase order date, rather than the invoice date, as the date of sale. There the petitioner based his argument on the allegation that there was too long an interval—presumably several months—between the purchase order date and the invoice date. However, the Department, citing its proposed regulations, stated that alternatives to invoice date are acceptable where there are long-term contracts or where there is an "exceptionally long lag time between date of invoice and shipment date." *See Wire Rod from India* at 38979. In *Wire Rod from India,* however, the Department noted that there were no long-term contracts and the lag between purchases and invoices during the period of review is not considered exceptionally long. Dongbu and Union note, however, that if in this instance the Department uses the contract date as the date of sale, there is a much longer lag between the sale date and invoice date.

As a further demonstration of recent Departmental practice, Dongbu and Union cite to *Seamless Pipe from Germany; Preliminary Results of Antidumping Duty Administrative Review,* 62 FR 47446 (September 9,

1997) ("*Seamless Pipe*"). There the Department rejected a respondent's use of the date of invoice as the date of sale in the home market and the "date of order confirmation" as the date of sale in the U.S. market. Instead, the Department used the shipment date and stated that "[s]ince there can be several months between order confirmation and shipment, using shipment date in both markets puts home market and U.S. sales on the same basis for date of sale." Dongbu and Union argue that the Department's date of sale determination in the preliminary results of this review cannot be reconciled with its determination in *Seamless Pipe* because there it used the shipment date as the date of sale in the home market and the contract date as the date of sale in the U.S. market, and thus placed home market and U.S. sales on entirely different bases.

Third, Dongbu and Union argue that the Department's determination to use contract date as the date of sale is inconsistent with its determination to use date of shipment as the date of sale for POSCO. They argue there is no apparent justification for treating Union and Dongbu differently from POSCO. Both Union and POSCO have a shared sales channel. They argue that the Department has not articulated any reason that the contract should be used as the date of sale for Union, but that the shipment date should be used as the date of sale for POSCO.

Fourth, Dongbu and Union argue that the Department's determination with respect to Union in this review is inconsistent with its determination in the first administrative review of this order. There the Department determined that it was inappropriate to use the date of contract as the date of sale, and instead used the date of shipment, basing its decision on the fact that quantities changed between order and shipment. Moreover, Dongbu and Union note that unlike this review, the Department in the first review had stated no preference for using invoice date as date of sale.

For all of these reasons Dongbu and Union state that the Department should use the invoice date as the date of sale. For those limited instances in which the date of shipment preceded the date of invoice, they argue, the Department should use shipment date as the date of sale, as this most clearly implements the Department's narrowly construed exceptions to the invoice date preference.

Petitioners argue that the Department was correct in using the contract date as the date of sale for both Union and Dongbu.

They argue, first, that Dongbu and Union misinterpreted the Department's statement in the preliminary results notice (cited above) that there were many instances in which the date of shipment preceded the date of invoice. Petitioners claim that this statement referred not, as Dongbu and Union believe, to the date of invoice between Dongbu and Union and their U.S. affiliates, but between their U.S. affiliates and their U.S. customers. Thus, petitioners argue that Dongbu's and Union's comments regarding the lag time between contract dates and invoice dates are inapposite.

Second, petitioners argue that the proposed regulations give the Department the latitude to use a date other than the invoice date as the date of sale. The proposed regulations state that the invoice date "may not be appropriate in some circumstances" for use as the date of sale. *See Notice of Proposed Rulemaking and Request for Public Comment*, 61 FR 7308, 7330 (February 27, 1996) ("*Proposed Regulations*"). Petitioners argue that one such circumstance would be where the potential for manipulation exists; that potential, they argue, exists where, as here, the invoices are between affiliated parties. Indeed, given the Department's traditional scrutiny of affiliated-party transactions, petitioners argue, it is not unreasonable to assume that the preference stated in the *Proposed Regulations* for using the invoice date as the date of sale applies only to invoices between unaffiliated parties.

Third, petitioners argue that reliance on Dongbu's reported date of invoice would be particularly unwise. The Department's verification report, petitioners argue, indicates that the commercial invoice from Dongbu Steel to Dongbu Corporation (which Dongbu reported as its date of sale) is not a formal accounting record, but is prepared for purely collateral purposes, such as securing payment on letter of credit sales. This invoice, therefore, is not corroborated by reference to unaffiliated parties or even by reference to Dongbu Steel's own internal accounting records. Thus, petitioners argue, the date reflected on this invoice cannot be verified from Dongbu's accounting records, and does not meet the Department's verification requirements.

Fourth, petitioners argue that the Department should reject, with respect to Dongbu, Dongbu's and Union's proposal that the Department use the shipment date as the date of sale if it refuses to use the invoice date as the date of sale. Petitioners argue that because Dongbu reported the bill of lading date as the date of shipment, and not the date of shipment from its manufacturing plant, the reported shipment date is subsequent to the invoice date, which even Dongbu acknowledged. Therefore, petitioners argue, the Department cannot use it as the date of sale. Thus, with respect to Dongbu, petitioners argue that there was no other date on the record that the Department could use as the date of sale other than the contract date.

Fifth, petitioners note that the Department's determination regarding the correct date of sale is consistent with its determination in the most recently completed review of this order. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 51882, 51885 (October 4, 1996).

Department's Position. We agree with Dongbu and Union that we should use the invoice date as the date of sale. While petitioners are correct that the *Proposed Regulations* give the Department the latitude to use a date other than the date of invoice as the date of sale, Dongbu and Union are also correct that our current practice with respect to the selection of the date of sale adheres to the our regulations and recent case law. Our current practice, in a nutshell, is to use the date of invoice as the date of sale unless there is a compelling reason to do otherwise. The reason underlying this preference is that typically the material terms of sale are established on that date. *See* 19 CFR 351.401(i).

In these cases, there is no record evidence indicating that a date other than the invoice date is the date after which the essential terms of the sale could not be changed. Moreover, the fact that Dongbu's reported invoice date is not a "formal accounting record" does not, contrary to petitioners" argument, make it unverifiable. We are not using the date of invoice between affiliated parties, but rather the date of invoice to the first unaffiliated purchaser in the United States, as the date of sale. In light of the foregoing, after reconsidering our use of the contract date as the date of sale in the preliminary results, we now find no compelling reason to deviate, in these cases, from the Department's current practice of using the invoice date as the date of sale.

Comments by Dongbu

Comment 32. Dongbu argues that the Department erred in determining that one of its U.S. sales was a CEP transaction rather than an EP

transaction. The sale at issue is one in which the U.S. customer who ordered the material canceled the purchase while the material was on the water *en route* from Korea to the United States. Dongbu subsequently resold the material to another customer (for a discount) after it entered U.S. customs territory. Between the time of its arrival and its subsequent resale, DBLA incurred warehousing and demurrage charges on this shipment.

Dongbu argues that for two reasons the Department should classify this sale as an EP sale for the final results. First, it argues that information gathered at verification conclusively demonstrates that Dongbu (and not DBLA) bore the cost of all the warehousing and demurrage charges and the discount, and was thus ultimately responsible for the disposition of the merchandise.

Second, Dongbu argues that the sale was not in Dongbu's normal business channel. Thus, classifying this sale as a CEP sale, Dongbu argues, is inconsistent with *Seamless Pipe* in which the Department considered the role that unusual transactions should play in determining whether an exporter sells on an EP or CEP basis. In deciding the proper classification, the Department examined the four criteria consistently applied in making this determination. The first two criteria, and the ones relevant to this discussion, Dongbu states, are: (1) Whether the merchandise is shipped directly to the unaffiliated buyer without being introduced into the affiliated selling affiliate's inventory, and (2) whether this procedure is the customary sales channel between the parties. In *Seamless Pipe* the Department found that application of these criteria was an insufficient basis to classify sales as CEP sales. The Department stated:

> In applying the first two criteria to the present review, we found that for the majority of sales, the merchandise was shipped directly to the unaffiliated U.S. customer without being introduced into MPS's [the respondent's affiliated sales agent's] inventory. We found that MPS occasionally buys for its own inventory, but we did not find any subject merchandise purchased for inventory during the POR. In addition, several sales were warehoused upon arrival in the U.S. when the original customer canceled its order * * *. The Department verified that the terms of sale during the POR were CIF duty paid to a port of entry near the customer's plant, and that MPS did not take physical possession of the shipment, except in the unusual instance described above.

Seamless Pipe at 47448. In *Seamless Pipe* the Department ultimately determined, based on the third and fourth criteria, that the sales were all CEP. However, Dongbu states that what this citation shows is that the existence of a few unusual transactions was not sufficient evidence to classify the U.S. sales as CEP sales. It argues that the decision in *Seamless Pipe* to consider the way the majority of sales were made is a much more reasonable application of the criteria, particularly considering that the ultimate responsibility for the sale was borne by Dongbu.

Petitioners argue that the Department correctly classified the sale at issue as a CEP sale. They cite the statutory definitions of EP and CEP sales:

> [T]he term "export price" means the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation * * *. Section 772(a) of the Act.
>
> [T]he term "constructed export price" means the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation. Section 772(b) of the Act.

Petitioners argue that Dongbu's argument ignores these statutory definitions under which all sales made after importation must be classified as CEP transactions. They argue further that even if it were appropriate for the Department to consider selling functions in making this determination, the sale would still be a CEP sale because all relevant sales activity occurred in the United States.

Finally, petitioners argue that *Seamless Pipe* is inapposite. There, they state, the vast majority of U.S. sales were sold prior to importation, and the Department thus applied its three-prong test to determine whether those sales were properly classified as EP or CEP transactions. There is no indication in the notice, petitioners state, that the Department applied that test to those sales which had been sold after importation. Rather, in its discussion of the three-prong test, the Department noted that the only incidences of warehousing involved those sales which had been resold due to customer cancellations.

Department's Position. We disagree with Dongbu. As indicated above in the Department's response to Comment 5, we have treated all of Dongbu's U.S. sales as CEP sales in these final results. Therefore, Dongbu's argument that the sale at issue was an "unusual transaction" is moot. Furthermore, the statutory definition of a CEP sale requires that the sale at issue be classified as a CEP sale because it was sold after importation into U.S. customs territory. That it was Dongbu, rather than Dongbu U.S.A., that bore the costs of the U.S. warehousing and demurrage is not determinative.

Comments by POSCO

Comment 33. The POSCO Group argues that in its preliminary results the Department erroneously disallowed an adjustment for post-sale warehousing expenses incurred in connection with certain sales made through the Pohang Service Center ("PSC"). The POSCO Group claims that the Department verified the calculation of this allocated expense in its review of a pre-selected home market sale, and the Korea verification report does not indicate that any of the data reviewed with respect to this sale, including that relating to post-sale warehousing expenses, was not verified or otherwise raised concerns for the Department.

Department's Position. As noted by the POSCO Group, pages 20 and 21 of Korea verification Exhibit 29 contain information detailing how a calculation of the expense in question was made. Neither the information in this exhibit, nor the Department's writeup of its review of this transaction in its verification report, indicates whether the values and per/ton calculated amounts are based on POSCO's payment to PSC, or, alternatively, on the expenses actually incurred by PSC. As noted by the Department in its September 2, 1997, preliminary analysis memorandum at 6, "it is not clear from the record what that amount represents." Furthermore, the Department had not been made aware of even the basic information relating to these alleged expenses prior to verification, although the Department's original questionnaire asked for a complete explanation of all parties involved in the provision or receipt of post-sale warehousing with respect to the respondent's home market sales, as well as other information pertaining to such services. By introducing this topic for the first time during the Department's review of the pre-selected sale in question, the POSCO Group prevented the Department from conducting a timely inquiry into the nature of these transactions, including whether or not the warehousing services allegedly provided by PSC were at arm's length. Consequently, we are continuing to disallow this adjustment for the final results.

Comment 34. The POSCO Group argues that the Department should not have disallowed a portion of reported post-sale warehousing provided for certain home market sales by a company in which POSCO owns a small stake. The POSCO Group argues that there is no evidence on the record to support the Department's apparent assumption that the expense was not made at arm's

length, and that the Department should correct its calculation of post-sale warehousing by eliminating the reduction to that expense utilized in the preliminary review results for the transactions in question.

Petitioners argue that the absence of information on the record is due to the POSCO Group's failure to supply information demonstrating that the transaction was at arm's length, despite the fact that the Department had made a similar downward adjustment to this expense in the previous review. Petitioners argue that it is the POSCO Group's burden to demonstrate the arm's-length nature of such transactions, and consequently the Department should maintain the adjustment that it made in its preliminary results.

Department's Position. We agree with petitioners. The record does not demonstrate the arm's-length nature of a certain part of the reported post-sale warehousing expense for transactions involving the affiliated party in question. In our preliminary results, we reduced this reported expense by only a small portion of the part of the expense associated with the affiliated party, to reflect POSCO's ownership stake in that company. We have continued to make this adjustment in our final results. *See* Preliminary Results Analysis Memorandum for the POSCO Group, September 2, 1997, at 6.

Comment 35. The POSCO Group argues that it reported all movement expenses associated with U.S. sales, and that the Department should not deduct from U.S. price any portion of the markups charged by AKO and BUS. The POSCO group states that these deductions contradict the plain language of the statute and the Department's uniform practice in prior cases, including all prior steel cases, and that, if accepted, the Department's reasoning reflects a major shift in practice that would have to be applied in all instances in cases where sales are made through affiliated parties, including Union and Dongbu.

The POSCO Group argues that the Department's deduction of a portion of the markups charged by AKO and BUS constitutes a reduction of the price of EP sales for profit, which is contrary to the law, and if adopted would impact the vast bulk of the Department's dumping cases. The POSCO Group states that the law only allows for a deduction for profit from CEP. The POSCO Group states that it is not aware of a single other instance involving the steel industry or any other industry in which the Department deducted profit earned by affiliated parties on the purchase and resale of subject merchandise.

The POSCO Group argues that the Department's long-standing policy concerning EP sales is to utilize the price paid by the first unaffiliated U.S. customer, and to deduct only direct selling expenses from that price, and that the Department disregards transactions between affiliated parties, such as between POCOS and AKO and BUS, when calculating EP. The POSCO Group cites as an example *Certain Iron Construction Castings from Canada: Final Determination of Sales at Less Than Fair Value,* 51 FR 2412 (January 16, 1986) ("*Castings*"), where the Department rejected petitioners' request that a markup earned by a related U.S. distributor be deducted from purchase (now export) price.

The POSCO Group notes that AKO and BUS perform no movement services themselves but pay unaffiliated customs brokers to perform the services at issue. The POSCO Group states that in the final results of the second review and the preliminary decision in this review, the Department refused to deduct any portion of markup earned by U.S. affiliates for Dongbu or Union sales because those affiliates, likewise, did not provide movement services themselves but utilized customs brokers or other unaffiliated parties to perform movement services. The POSCO Group notes that in the final results of the second administrative reviews the Department determined that Union's U.S. affiliate did not directly perform the brokerage and handling services but rather employed brokers to do so, that all U.S. brokerage and handling expenses incurred by the affiliate on behalf of Union were fully reported, and that there is no legal basis for deducting an amount for U.S. profit on these sales because U.S. profit deductions are only allowed in connection with CEP sales, not EP sales. *See Second Review Final Results* at 18441. The POSCO Group states that for Dongbu the Department noted that the cost of arranging for U.S. brokerage and handling, U.S. Customs clearance, payment of customs duties, and for being the importer of record, are reflected in the brokerage fees paid by the U.S. affiliate, Dongbu USA.

The POSCO Group states that BUS paid the customs broker a fixed fee that covers the customs brokers' administrative and overhead costs incurred in arranging for and paying those expenses, and that applying a markup to those expenses to allegedly reflect BUS's overhead in effect improperly double counts those overhead expenses because the flat fee already paid to the customs broker includes any overhead and general expenses incurred in arranging for and paying for those expenses. Furthermore, the POSCO Group states that the Department deducted a portion of the markup purportedly relating to inland freight costs, and that this was factually incorrect because BUS in fact performed no U.S. inland freight services, nor did it even arrange for those services.

The POSCO Group argues that the Department's purported justification for the deduction is incorrect because the Department never asked for information relating to other supposed expenses incurred by AKO and BUS that the Department is associating with movement services. The POSCO Group indicates that the Department refused such information at verification that allegedly showed that no adjustment was necessary because the purported expenses, like those incurred by POSTRADE and POSAM in relation to U.S. sales, were *de minimis.*

Similarly, the POSCO Group argues that the Department's apparent reasoning that AKO's entire markup should be deducted because AKO only performs movement services is incorrect because AKO performs no movement services. The POSCO Group states that AKO performed the same services and played the same role for POCOS as POSTRADE did for POSCO. The POSCO Group alleges that the Department verified that POSTRADE incurs no additional expenses for movement services, and that the Department as a result determined that POSTRADE's markup should not be deducted, citing the Department's statement in its preliminary analysis memorandum that POSTRADE and POSAM "incurred virtually no additional expenses as a result of the services in question." Furthermore, the POSCO Group asserts that there is no information on the record contradicting its assertion in its Section C supplemental questionnaire response at 25 that AKO was not involved in any activities associated with the movement of subject merchandise to POCOS's U.S. customers, but rather that AKO only helps generally to facilitate communications between POCOS and the U.S. customers, transferring documents between BUS and POCOS, and that AKO took title to the merchandise for U.S. sales and relinquished it in back-to-back transactions by issuing invoices to BUS. Therefore, the POSCO Group concludes, there is no rationale for the Department's deduction of the markup earned by AKO.

The POSCO Group argues that the Department's reasoning that AKO's and BUS's markups should be deducted because they are only indirectly

affiliated with POCOS, while POSTRADE and POSAM are wholly-owned by POSCO, creates an artificial distinction between wholly-owned and affiliated firms that has no legal or factual basis. The POSCO Group also states that the Department made no such distinction for indirect affiliation for Union in either the final results of the second administrative reviews or in the preliminary results of these reviews, choosing not to make any adjustment for markups earned by its U.S. affiliate. The POSCO Group states that there is no basis in the law for the notion that profits should be deducted from "indirectly" affiliated parties, whereas they should not be deducted for transactions between wholly-owned parties. The POSCO Group claims that if this rationale is accepted, the Department would need to create an entirely new methodology for something called "indirectly affiliated" parties, a distinction which the statute does not make. The POSCO Group states that two parties either are or are not affiliated, and the "degree" of affiliation is irrelevant to the dumping analysis. The POSCO Group claims that the Department's decision in *Certain Internal Combustion Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review*, 57 FR 3167, 3179 (January 28, 1992) ("*Forklifts*") to deduct the markups made by an affiliated trading company was due to the fact that the markups represented actual expenses relating to movement of the subject merchandise, a situation which the POSCO Group asserts is not the case in these proceedings.

The POSCO Group states that the Department uniformly looks at the costs to the collapsed entity consisting of affiliated parties rather than to the transfer prices between affiliated parties. For example, the Department routinely disregards commissions between affiliated parties because it considers such commissions to be mere intra-corporate transfers of funds. *See Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Colombia*, 60 FR 6980 (February 6, 1995) ("*Roses*"). The POSCO Group states that in *Timken* v. *United States*, 630 F.Supp. 1327, 1342 (CIT 1986) ("*Timken*"), the CIT held that the statutory deduction for commissions did not require the Department to also deduct the profit earned by a U.S. subsidiary. The POSCO Group states that the Department's decision to deduct the entire markup earned by AKO and a portion of the markup earned by BUS flies in the face of this logic and constitutes the deduction of profit earned by related parties on EP sales.

In any case, the POSCO Group argues that the Department's resort to an adverse facts available calculation based upon a third party's data is highly inappropriate because it did not request such information for AKO and BUS, that it refused such information when it was supplied at verification, and because the Department verified that the alleged "unreported movement expenses" for POSAM and POSTRADE were *de minimis*, and therefore should have used this information as the most accurate and reasonable "facts available" for the AKO/BUS purported "unreported movement expenses." Furthermore, the POSCO Group states that the Department, in utilizing information from Dongbu Express as the basis for the adjustment for BUS, erred in that BUS, unlike Dongbu Express, is not a freight forwarder. The POSCO Group asserts that Dongbu Express actually performs transportation services, while BUS does not.

Furthermore, in applying the Dongbu Express data to BUS, the POSCO Group asserts that the Department utilized an inappropriate methodology, and suggests several alternatives that utilize Dongbu Express public information from the record. Finally, the POSCO Group asserts that the Department, in applying the Dongbu Express data to BUS, utilized incorrect calculations, and presents what it characterizes as more reasonable alternative applications utilizing Dongbu Express public information from the record.

Petitioners retort that the Department properly deducted from U.S. price the markups charged by AKO and BUS for their role in arranging for the provision of movement-related services. Petitioners cite *Final Determination of Sales at Less Than Fair Value: Certain Internal-Combustion, Industrial Forklift Trucks from Japan*, 53 FR 12552 (April 15, 1988), and *Second Review Final Results* at 18433–18435, as precedents for such a deduction from U.S. price. Furthermore, petitioners note that the precedent was in fact established in the first administrative reviews of these orders with respect to Dongbu Express, a party affiliated with Dongbu Steel, for instances involving home market sales of that respondent. Petitioners argue that the POSCO Group is correct in its determination that the Department acted inconsistently across respondents on this issue in its preliminary results, but was wrong in its prescription for eliminating the inconsistency. Petitioners indicate that this inconsistency should be rectified not by dropping the adjustment for AKO and BUS, but by deducting from U.S. prices the markups charged by all of the respondents' Korean and U.S. affiliates to the extent that they can be linked to movement-related services.

Petitioners argue that even if it is assumed that the affiliates in question do not function as freight forwarders or customs brokers, they do act as intermediaries between the producers and the independent providers of movement-related services for U.S. sales. Contrary to certain claims of the POSCO Group, petitioners state, these affiliates do incur additional expenses and earn profit for performing this type of liaison and coordination function pertaining to movement services. Petitioners note that the Department previously has determined that intermediaries between the respondent and independent providers of movement-related services, such as Dongbu Express, incur expenses and earn profits that constitute legitimate movement-related expenses. Petitioners note that given that the affiliates of POSCO and of POCOS serve as intermediaries in a manner substantially identical to that of Dongbu Express, their markups charged for arranging for movement-related services also are legitimate movement expenses that must be included among the others for U.S. sales.

Petitioners state that the record establishes that the affiliated Korean and U.S. trading companies do perform movement-related services and incur expenses in the process in addition to what they are billed by the independent providers of movement-related services. Petitioners also state that it is clear that POSAM and BUS act as intermediaries between POSCO and POCOS and the independent movement-related service providers, and as such are integrally involved in the movement of subject merchandise. Consequently, the POSCO Group's characterization of the markups of the trading companies as solely intra-company profit is incorrect, because they also capture actual expenses. Petitioners argue that the record does not establish that the expenses incurred by AKO and BUS in providing movement-related services were *de minimis*. Regardless of the magnitude of those expenses, though, petitioners note that the entire portion of the markup that can be attributed to such services, including both profit and expenses, should be deducted from U.S. price. The Department has included in its deduction from home market price for Dongbu the entire payment to Dongbu Express, reflecting both the amounts paid by Dongbu Express to independent providers and its markup (which itself

includes additional Dongbu Express expenses and Dongbu Express profit). Consequently, petitioners argue, the Department should deduct the entire markup on movement-related services for POSAM, POSTRADE, AKO, and BUS, as a proxy for the amount of markup that the respondent would have to pay if it employed an independent party to arrange for movement-related services.

Petitioners argue that the Department should deduct POSAM's markups from POSCO's U.S. selling prices. Petitioners note that the Department, in its preliminary results, concluded that the amount of actual expenses incurred by POSAM in arranging for the provision of movement-related services, after the elimination of "internal transfers" between POSAM and POSCO, was not sufficiently material to warrant the calculation of an adjustment. Petitioners argue that this conclusion apparently is based on POSCO's flawed calculation during verification of the amount of actual expenses POSAM purportedly incurred in arranging for movement-related services. Petitioners argue that POSCO provided no explanation of how it determined the total expense pool used in the calculation of POSAM's markup, and therefore the Department should use POSAM's total SG&A as the appropriate basis for the calculation. Petitioners also question as unsupported by the record the percentage factor POSCO claimed at the Korea verification as the appropriate basis for determining the portion of the total expense pool to be attributed to the expenses in question. Finally, petitioners question the POSCO Group's cited total quantity of steel used to determine the per-ton expense, indicating that the quantity used was significantly larger than the total quantity of subject merchandise (cold-rolled and corrosion-resistant) reported in the databases.

The POSCO Group, responding to petitioners' arguments regarding the POSAM markup, states that petitioners' arguments are moot because there is no basis for the deduction of any markup for the affiliated parties in question. Nevertheless, the POSCO Group argues that the portion of the markup that constitutes an internal transfer cannot possibly be deducted from U.S. price, and the POSCO Group asserts that POSAM did not incur any movement expenses that it did not report in its tape submission. The POSCO Group argues that even under the Department's "stretched rationale," the only direct movement expenses even theoretically at issue would be those *de minimis* telephone and fax charges incurred by POSAM to contact customs brokers, and the Department's Korea verification Exhibit 41, its Korea verification report, and its preliminary analysis memorandum demonstrate these expenses were in fact *de minimis*. The POSCO Group argues that petitioners' challenge to the data in verification Exhibit 41 is based on the faulty assumption that the costs indicated in that exhibit should be compared to POSAM's overall SG&A expenses, when sales of subject merchandise account for only a small portion of POSAM's sales, and petitioners' incorrect assumption that indirect expenses indicated in verification Exhibit 41 should be relevant, when in fact the Department is only concerned with direct expenses if it is trying to estimate movement expenses. The POSCO Group says it obviously was not able to segregate out telephone and fax charges relating solely to imports of subject merchandise versus imports of all merchandise, so the total pool of expenses is for imports of all merchandise, and the corresponding quantity figures used in the calculation of the per-ton expense are for all imports.

Department's Position. We examined at verification the actual additional unreported movement expenses incurred by POSCO's affiliates (*e.g.*, expenses associated with telephone calls from POSAM to customs brokers). Because the actual unreported movement expenses are insignificant in relation to the prices of each respondent's merchandise, we are making no special adjustment to U.S. price for them. *See* section 777A(a)(2) of the Act. There is no evidence that POCOS's affiliates had any substantive unreported movement expenses, either. In any case, such unreported movement expenses for POSCO and POCOS will be accounted for in the additional deductions made from U.S. price resulting from our reclassification of all of the POSCO Group's U.S. sales (except for those made to one customer, as also noted earlier) as CEP sales, as such expenses are reflected in the trading companies' SG&A expenses that we are using as a basis for estimating the U.S. indirect selling expense variable.

With respect to the profit earned by those affiliates, we have determined those profits should be disregarded as an internal transfer. There is nothing unique about the affiliations between the manufacturers and the trading companies that would warrant a departure from this standard practice. Consistent with our practice in cases such as *Roses*, for purposes of these final results we are treating the profits earned by the affiliates as a result of these back-to-back transactions as intracorporate transfers of funds, and are thus making no adjustments to CEP to account for them.

Comment 36. The POSCO Group argues that the Department erred in adjusting POSCO's reported cold-rolled costs for alleged discrepancies in thickness. First, the POSCO Group states that its submitted costs accurately reflect the Department's required thickness product characteristic. POSCO's RPG system tracks products' thicknesses in bands that overlap various Department model-match characteristic thickness bands, and for instances where more than one RPG thickness band crossed into a Department thickness band, the POSCO Group says it reported costs reflecting each RPG thickness included in that Department thickness band.

The POSCO Group asserts that the Department erred in its conclusion that POSCO had been inconsistent in its application of this methodology. The Department's assertion that the POSCO Group had failed to include the costs of one RPG thickness band group of products in the calculation of costs for a certain CONNUM (possessing a specific Department thickness band) was based on the Department's failure to take into account that while POSCO sells products and tracks cost data on a nominal basis, the Department's thickness bands are specified in the questionnaire in actual terms. The POSCO Group notes that exhibit SD–12 of the March 3, 1997, supplemental submission indicates that the RPG system is based on nominal thickness.

The POSCO Group also argues that the Department, even if it persists in incorrectly characterizing the situation as a reporting inconsistency, was not justified in applying an adverse adjustment to the reported costs for the CONNUM in question, that the Department had not requested the necessary information and cannot penalize a respondent because it does not maintain its records in a manner in which the Department would prefer, and that the Department had access to data that would allow a less unreasonable adjustment.

Petitioners argue that the Department should make additional adjustments to POSCO's submitted cost information consistent with its sampling methodology. Petitioners argue that a large proportion of the CONNUMs reviewed contained problems involving understatements of cost to the POSCO Group's benefit. They cite, in addition to the example noted by the Department in its preliminary results, an example where the POSCO Group followed its

stated methodology so that a thicker, and hence probably a less costly, RPG grouping that barely overlapped into a Department thickness category was utilized in that calculation of costs for CONNUMs possessing thicknesses in that Department thickness category band. Because this is an indication that the problem may be pervasive, petitioners argue, the Department should make additional adjustments to CONNUMs exhibiting similar overlapping of RPG and Department thickness categories for both cold-rolled and corrosion-resistant products.

The POSCO Group reiterates that petitioners, like the Department, have failed to convert POSCO's nominal thickness information to an actual-thickness basis. The POSCO Group also argues that the petitioners have suggested that the POSCO Group should have altered its reporting methodology for certain unspecified instances. The POSCO Group argues that such an approach would have been subjective and would undoubtedly have raised concerns precisely because it would be ripe for manipulation. The POSCO Group argues that there is no evidence supporting petitioners' observation that a thinner RPG is more expensive to produce than a thicker RPG, and that the record demonstrates that the differences in costs between individual RPGs may not be due solely to differences in thickness. The POSCO Group argues that there is no basis for such an adjustment to corrosion-resistant CONNUMs either, and that there is no basis for any adverse adjustment such as that suggested by petitioners.

Department's Position. We agree with the POSCO Group that in its preliminary results the Department failed to account for the fact that POSCO's thickness groupings are based upon nominal thickness, as was noted in Exhibit SD–12 of the March 3, 1997, submission. When conversions are made to account for this, it is clear that there was in fact no discrepancy, and that the Department erred in making any adjustment to the POSCO Group's costs with respect to the thickness of cold-rolled merchandise. For the final results, we have removed the programming language that adjusted the costs for the CONNUMs at issue. The parties' other arguments, therefore, are moot.

Comment 37. The POSCO Group argues that the Department should reduce POSCO's reported costs by the amount of the requested startup adjustment for extraordinary costs associated with the startup phase of a facility. The POSCO Group states that the statute requires the Department to make an adjustment for startup operations where the producer is using new production facilities or producing a new product that requires substantial additional investment, and where production levels are limited by technical factors associated with the initial phase of commercial production.

The POSCO Group argues that a substantial investment was required to increase significantly its capability of producing a certain range of products. The POSCO Group claims that it has demonstrated it was using new facilities and manufacturing new products at those facilities during the POR, and as such POSCO met the first prerequisite for a startup adjustment under the statute.

The POSCO Group argues that the second prerequisite, that production levels during the POR were limited by technical factors associated with the startup, was also fulfilled, as demonstrated by data provided on the record. The POSCO Group asserts that POSCO's Korea verification exhibit 37 indicates at 3 that production was limited during the initial months so that the products would meet required stringent quality standards before full production ensued. The POSCO Group argues that it is clear that other factors unrelated to startup, such as demand, business cycles, chronic production problems, or seasonality do not account for the limited production quantities. It argues that demand was consistently high, with POSCO's other lines operating at full capacity and that production from the new line rose steadily throughout the startup period. POSCO noted that it was clear as of October 1996 that it had reached full capacity.

The POSCO Group states that the costs for products manufactured on this line were allocated over only a very small amount of production, and that this naturally resulted in abnormally high unit production costs for the affected merchandise. The production from the facility during the POR accounted for only a small percentage of total production of the general type of product, but, the POSCO Group notes, the Department requires that respondents provide a single weighted-average CONNUM-specific cost, regardless of the facility; consequently, the POSCO group states, it provided data showing the impact on the CONNUM-specific cost. The POSCO Group asserts that based on facts essentially identical to those in this case the Department recently granted a startup adjustment. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Static Random Access Memory Semiconductors from Taiwan*, 62 FR 51442, 51448 (October 1, 1997). The POSCO Group states that the adjustment factors listed in Korea verification Exhibit 1 should be used to reduce the reported costs.

Petitioners argue that the Department should reject the POSCO Group's claim for a startup adjustment because, contrary to the POSCO Group's assertions, it has not met the statutory requirements for receiving such an adjustment, which are to demonstrate that it is using new production facilities or producing a new product that requires substantial additional investment, and that the production levels associated with the startup are limited by technical factors associated with the initial phase of commercial production. *See* section 773(f)(1)(C) of the Act.

Regarding the first prong, petitioners state that evidence on the record clearly demonstrates that POSCO's purported "startup" operations do not constitute "new production facilities," nor do they result in production of a "new product" that requires substantial additional investment. Petitioners note that the SAA at 836 defines "new production facilities" to include "the substantially complete retooling of an existing plant," and that "[m]ere improvements to existing products or ongoing improvements to existing facilities will not qualify for a startup adjustment." Petitioners state that the addition is simply of one line amidst others in the same facility, "a mere addition to an already existing facility," and that the POSCO Group has not shown that the new line is comprised of different machinery requiring different technicians or workers, or whether the production process differs from that of other lines.

Petitioners characterize the expansion of capacity resulting from the line as insufficient grounds for a startup adjustment, as the SAA states at 836 that an expansion of the capacity of an existing production line could be considered for a startup adjustment only if the expansion constitutes such a major undertaking that it requires the construction of a new facility, and that it results in a depression of production levels below previous levels due to technical factors associated with the initial phase of commercial production of the expanded facilities. The petitioners state that no new facility was constructed, and that the POSCO Group admits that overall production levels did not decrease during the POR.

Petitioners argue that the POSCO Group also failed to demonstrate that its purported "startup" operations resulted in production of a "new product." Petitioners note that the SAA at 836 defines a "new product" to include "one requiring substantial additional investment, including products which, though sold under an existing nameplate, involve the complete revamping or redesign of the product." Petitioners state that while the POSCO Group claims that the new line produces or is capable of producing products with different physical characteristics for a specific class of end-users, the POSCO Group admitted at verification that its other lines could also be used to manufacture products with those same characteristics and for the same end-users. Petitioners state that the POSCO's Group's reported sales databases indicate that it produced substantial quantities of products with such physical characteristics prior to the operation of the new line. Petitioners also note that POSCO's product brochures pre-dating the new line explicitly indicate that the products with the characteristics in question were previously available, and thus should not be considered "new" to respondent's production. Furthermore, petitioners argue that the magnitude of the investment in the new line, relative to that of POSCO's total value of property, plant, and equipment, was not a "substantial additional investment," as is required by the SAA in order for the startup adjustment to be considered in the context of a "new product." Finally, petitioners argue that the SAA at 836 indicates that improved or smaller versions of a product will not render the product a "new product," and that the products to which the POSCO Group refers would be disqualified on this basis.

Regarding the second prong, petitioners state that evidence on the record clearly demonstrates that POSCO's production levels were not affected by its "startup" operations, and that the POSCO Group failed to demonstrate that "technical factors" negatively affected production. As noted earlier, petitioners argued that production levels were not depressed, and in fact they note that information on the record demonstrates that the difference between the monthly average production for the startup period as defined by the POSCO Group and the monthly production level for the line in question at the end of this period only represents a very small percentage of total estimated production of corrosion-resistant products. With regard to the influence of technical factors upon production levels, petitioners argue that the POSCO Group, in its own case brief, acknowledged that POSCO experienced no chronic production difficulties, and that it experienced no significant technical difficulties preventing it from bringing the line in question to commercial production levels in relatively short order.

Petitioners state that the SAA provides that to the extent necessary the Department would consider other factors, such as historical data reflecting producers' experiences in producing the same or similar products, and whether factors unrelated to startup operations may have affected the volume of production, such as market conditions of supply and demand, or seasonality or business cycles. SAA at 836–7. However, petitioners argue, the POSCO Group provided no such support, but rather only unsupported claims. For example, petitioners challenge the POSCO Group's assertion in its case brief that POSCO's substantial experience in starting up similar operations is relevant in helping explain what might be characterized as low initial production levels in this instance.

Petitioners argue that if a startup adjustment is granted, it cannot cover a period beyond May 1996, given the reported production levels for June 1996 and the POSCO Group's statement in its March 3, 1997, Supplemental Section D response at 31 that the company completed test production at the end of May 1996 and followed this testing period with commercial production. Petitioners also argue that any such adjustment would need to be limited to the specific operation in question, and that, because such information is not available on the record, the actual amounts of the adjustment cannot be calculated.

Department's Position. We agree with petitioners that the POSCO Group failed to demonstrate that it is entitled to a startup adjustment for the line in question. The POSCO Group's assertions regarding the output of the line constituting a "new product" are contradicted by the record. For example, the POSCO Group's databases and product brochures indicate that the POSCO Group manufactured products such as those produced from the new equipment prior to its installation. The POSCO Group indicated at verification "that the new line is capable of processing thinner and narrower merchandise than its other galvanizing lines, and that the intended uses of steel produced on the new line were for home appliances" produced by companies such as two Korean manufacturers, but the POSCO Group conceded upon later questioning "that the galvanized steel produced on its other lines could also be used for home appliances." June 27, 1997, Korea verification report at 2. The information noted at verification also indicates that the product range of the line in question is basically comparable to that of other POSCO Group lines with respect to dimensions.

If the products in question were truly new, as the POSCO Group has argued, assertions regarding the consistently high demand for POSCO's other products and its high capacity utilization at other lines would be irrelevant with respect to the second prong of the startup cost test, which requires that the production levels were limited by technical factors. The demand and supply associated with POSCO's other galvanizing lines could be unrelated to the supposedly thinner products being manufactured for appliance manufacturers on the new line. Furthermore, if the products were in fact new, there is no reason for distributing an adjustment concerning products in CONNUMs allegedly targeted to Korean appliance manufacturers to all galvanized products, including products in other CONNUMs purchased by U.S. customers. As noted by petitioners, such line-specific information is not available on the record.

In addition, it is not clear that the new line in question constitutes a new facility, as required by the new startup adjustment provision. The line is one of many producing merchandise similar to that manufactured on numerous other lines by POSCO and POCOS. The POSCO Group provides no convincing evidence that the new line should be considered "new production facilities" or "the substantially complete retooling of an existing plant."

The POSCO Group's assertion that it met both prongs of the requirement fails on other grounds. Even accepting that the general demand for POSCO galvanized merchandise, relative to overall capacity, was high, the POSCO Group has not demonstrated that production levels on the new line were limited by technical factors. At verification in Korea, the Department "requested additional information pertaining to the claimed startup adjustment" (June 27, 1997, Korea verification report at 2), and the POSCO Group provided what is contained in Korea verification Exhibit 37. The POSCO Group is incorrect in its assertion that that exhibit indicates at 3 that production was limited during the

initial months so that the products would meet required stringent quality standards before full production ensued. That page provides no information detailing the reasons for the variations in monthly output. Furthermore, even assuming that production levels were limited by technical factors (as also noted by petitioners), it is not clear from the record when commercial production levels were reached.

Because the POSCO Group has not met both conditions for being granted a startup adjustment, we have not made such an adjustment in the final results.

Comment 38. The POSCO Group argues that the Department erred when it adjusted POCOS's reported costs for quality. The POSCO Group argues that POCOS's cost accounting system does not track the quality of the input, so an adjustment was not warranted. The POSCO Group argues that, when reporting costs, the Department requires that companies rely on the actual costs as recorded in the normal accounting system if that system is in accordance with the foreign country's GAAP and it is clear that the figures do not distort the dumping calculations. *See Ferrosilicon from Brazil; Final Results of Antidumping Duty Administrative Review*, 61 FR 59407, 59409 (November 22, 1996) ("*Ferrosilicon*"). The POSCO Group notes that in many cases where respondents have not relied on their normal accounting system to report costs, the Department has applied adverse facts available. *See Certain Cut-to-Length Carbon Steel Plate from Sweden; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 51898, 51899 (October 4, 1996) ("*Swedish Plate*"). The POSCO Group argues that the Department has only adjusted a respondent's reported costs which are based on its normal accounting system where the Department determined that those normal practices resulted in an unreasonable allocation of production costs. *Semiconductors* at 15472. The POSCO Group argues that in cases where a company has been unable to provide costs at the level of detail requested by the Department, the Department has accepted the reported costs where it was satisfied that those costs nonetheless reasonably reflected the actual costs of producing the subject merchandise during the POR. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 13815, 13817 (March 28, 1996). The POSCO Group characterized cost differences between commercial, drawing, and deep drawing products as ones "perceived" by the Department. Finally, based on a reference elsewhere to the Department's preliminary adjustment for coating weight costs, the POSCO Group seemingly characterized the adjustments made by the Department for quality as the use of adverse facts available.

Petitioners argue that the facts in these reviews for this issue are identical to those in the second administrative reviews, where the Department made a similar adjustment to the POSCO Group's reported costs. Petitioners argue that the adjustment in question is not adverse, though the Department would have been justified in making the adjustment based upon adverse facts available because the POSCO Group did not provide product-specific cost information as requested by the Department and, in not doing so, it did not act to the best of its ability to comply with the Department's request for information. *See* section 776(b) of the Act.

Petitioners' argue that the POSCO Group's reference to *Ferrosilicon* is inapposite because the Department's decision to use the respondent's reported costs in that case was based upon the conclusion that the figures did not distort the dumping calculations, which clearly is not so in this case. Petitioners argue that submitted cost data for POSCO, which accounts for quality differences, suggest that failure to account for quality differences may lead to significant understatement of certain products' costs. Petitioners state that the POSCO Group's reference to *Swedish Plate* is also inapposite, because the Department resorted to facts available in that case not because the respondent failed to rely on its normal cost accounting system or developed a new cost system just for purposes of reporting, but rather "[b]ecause the company was unable to reconcile the submitted cost data to its normal accounting books and records." *Id.* at 51899.

Furthermore, petitioners argue that the Department's use of facts available in *Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Brazil*, 58 FR 37091 (July 9, 1993) ("*Flat-Rolled Steel from Brazil*") supports the Department's preliminary decision in these reviews. In the Brazilian case, petitioners note, the Department found that the respondent had improperly aggregated its production costs based on certain product characteristics, and submitted production costs which included the average cost of extras, with the result that, according to the Department, the respondent's submitted costs, as averaged over several different products, "did not appropriately specify the cost of individual extras, as required by the Department." *Id.* at 37097.

Finally, petitioners note that if POCOS is selling products with different quality characteristics, it presumably would take this fact into account in pricing its products.

Department's Position. The Department has relied upon POCOS's normal accounting system, except to the extent that it determined that doing so would result in an unreasonable allocation of production costs and a possible distortion of dumping margins. The apparent inability of POCOS to distinguish costs on the basis of quality indicates that its reported costs do not reflect the actual costs of producing the subject merchandise at the level of detail desired by the Department. The quality characteristic is relatively high in the Department's model-matching hierarchy, and the POSCO Group companies distinguish between qualities in their selling practices. The presence of non-trivial differences between costs of CONNUMs produced by POSCO that differ in terms of the Department's hierarchy only for quality supports the contention that this is a characteristic for which differences should be reflected in costs, and the Department's approach in *Ferrosilicon* would not be appropriate here.

As noted in the Department's September 2, 1997, preliminary analysis memorandum at 7, the adjustment made to the costs for POCOS commercial, drawing, and deep-drawing qualities reflected a methodology comparable to that used in the final results of the second administrative reviews. At no time during these reviews did the POSCO Group suggest an alternative methodology, even though the Department's questionnaire indicated that the POSCO Group should report a single weighted-average cost for each unique product as represented by a specific CONNUM. However, because POCOS does not track costs based on quality, and because the Department did not insist that the POSCO Group devise a methodology to estimate differences in POCOS costs for quality, the use of adverse facts available, such as that used in *Swedish Plate* and in *Flat-Rolled Steel from Brazil*, would not be appropriate. The non-adverse nature of the adjustment the Department made in its preliminary results is demonstrated by the fact that the Department utilized data from POSCO CONNUMs that were chosen based on their aggregate

production quantity, rather than on the magnitude of the differences in cost, and upon the fact that the methodology utilized resulted in the costs of some CONNUMs being decreased, while the costs of others were increased. *Id.* at 8. Furthermore, the Department's use of POSCO data to adjust the costs of POCOS production for quality is reasonable because the Department has collapsed these companies. The POSCO Group, in fact, urged the Department to base POCOS's substrate input costs upon POSCO's actual costs of producing that input, and the use of POSCO's costs as a basis for adjusting reported POCOS costs for quality is consistent with this approach.

Comment 39. The POSCO Group asserts that the Department, in its preliminary results, penalized the POSCO Group for submitting average costs for merchandise with different coating weights. The POSCO Group states that these average costs reflect the treatment of coating weight in POSCO's normal accounting system, that the Department had no basis for applying adverse facts available for different coating weights, and that the same arguments that it made for the Department's adjustments for quality apply to this issue. The POSCO Group argues that the costs reported were consistent with POSCO's accounting system. The POSCO Group states that based upon its experience in the distribution of produced coating weights, the product distribution of POSCO galvanized products is "skewed toward one value," and cites figures that it alleges are based upon reported home market sales information. Consequently, the POSCO Group argues, its decision not to track such costs is reasonable and its normal system not distorting. The POSCO Group argues that average costs for specific costs are often reported to and accepted by the Department.

The POSCO Group argues that the Department's methodology for calculating the adjustment for coating weight of POSCO products is erroneous, in that it was based upon information derived from POCOS production. The POSCO Group argues that even if one were to assume that coating weight cost differences at POCOS are the same as at POSCO, the Department's applied cost differentials for each coating weight implicitly assumes that POSCO's distribution of production of coated products is identical to that of POCOS. The POCOS Group argues that if the Department continues to adjust for POSCO coating weight differences, it should base its cost differential adjustments upon the distribution of production of POSCO coated products.

Petitioners argue that, as in the case of the adjustment for quality, the Department's adjustment for the POSCO Group's failure to account for the distribution of coating weight costs across different products was appropriate. Petitioners state that the POSCO Group did not report to the best of its ability, and that its reported costs distort the dumping analysis. Petitioners state that reported data for POCOS, which tracks costs by coating weight, indicate that the costs of certain products may be significantly understated if coating weight is not taken into account. Petitioners contest the POSCO Group's assertion regarding the distribution of POSCO production by coating weight, and the POSCO Group's conclusions from these data regarding the acceptability of the reported costs for POSCO products and the appropriateness of the Department's adjustment based upon POCOS production.

Petitioners counter the POSCO Group's statement that the Department often accepts the use of average costs for various items, such as labor, overhead, and SG&A, noting that it is the Department's clear practice to reject averages in cost reporting where it prevents the use of product-specific costs in its margin calculations, and that the Department usually prefers weighted averages to simple averages.

Finally, petitioners note that if POSCO is selling products with different coating weights, it presumably would take this fact into account in pricing its products.

Department's Position. The Department has relied upon POSCO's normal accounting system, except to the extent that it determined that doing so would result in an unreasonable allocation of production costs and a possible distortion of dumping margins. The apparent inability of POSCO to distinguish costs on the basis of coating weight indicates that its reported costs do not reflect the actual costs of producing the subject merchandise at the level of detail desired by the Department. The coating weight characteristic is relatively high in the Department's model-matching hierarchy, and the POSCO Group companies distinguish between coating weights in their selling practices. The presence of non-trivial differences between costs of CONNUMs produced by POCOS that differ in terms of the Department's hierarchy only for coating weights supports the contention that this is a characteristic for which differences should be reflected in costs, and the Department's approach in *Ferrosilicon* would not be appropriate here.

As noted in the Department's September 2, 1997, preliminary analysis memorandum at 8, the adjustment made to the costs for POSCO coating weights reflected a methodology comparable to that used in the final results of the second administrative reviews. At no time during these reviews did the POSCO Group suggest an alternative methodology, even though the Department's questionnaire indicated that the POSCO Group should report a single weighted-average cost for each unique product as represented by a specific CONNUM. However, because POSCO does not track costs based on coating weight, and because the Department did not insist that the POSCO Group devise a methodology to estimate differences in POSCO costs for coating weight, the use of adverse facts available, such as that used in *Swedish Plate* and in *Flat-Rolled Steel from Brazil*, would not be appropriate. The non-adverse nature of the adjustment the Department made in its preliminary results is demonstrated by the fact that the Department utilized data from POCOS CONNUMs that were chosen based on their aggregate production quantity, rather than on the magnitude of the differences in cost, and upon the fact that the methodology utilized resulted in the costs of some CONNUMs being decreased, while the costs of others were increased. *Id.* at 8–9.

The Department's use of POCOS data to adjust the costs of POSCO production for coating weight is reasonable because the Department has collapsed these companies. The POSCO Group in fact urged the Department to base POCOS's substrate input costs upon POSCO's actual costs of producing that input, and the use of POCOS's costs as a basis for adjusting reported POSCO costs for coating weight is consistent with this approach. Basing an adjustment upon a distribution of POSCO products, as the POSCO Group requests, is not feasible for the simple reason that POSCO does not track costs for coating weight. A completely neutral redistribution of costs relating to coating weights is not possible. Furthermore, basing an adjustment to costs upon verified cost information such as the Department did in its preliminary results is preferable to basing one upon unsubstantiated assertions about production that the respondent has founded upon ambiguous references to sales data and introduced late in the proceedings in its case brief.

The POSCO Group could have proposed alternative methodologies earlier in the process, and in fact did not

immediately provide all of its information pertaining to POSCO tracking of coating weights. In its original questionnaire response, the POSCO Group failed to identify the meaning of certain digits in the POSCO RPG product code. Asked about those digits in a supplemental questionnaire, the POSCO Group stated that they related to coating weight and were not utilized for cost purposes (see the March 3, 1997, Section D supplemental questionnaire response at 22–23), but this explanation significantly understated the extent to which such information had been previously utilized. Id. and the June 27, 1997, Korea verification report at 10–11.

Comments by Union

Comment 40. Union contends that the Department improperly classified Union's post-sale warehousing expenses as indirect selling expenses, instead of as movement expenses, contrary to Department practice.

Department's Position. We agree with respondent and have adjusted our analysis accordingly for these final results.

Comment 41. Union asserts that the Department improperly reclassified certain EP sales as CEP sales on the basis of some reported expenses, which appeared to suggest that further processing had been incurred, whereas the amounts in question merely reflected demurrage and handling, a fact which was reported in Union's response.

Petitioners do not agree that the Department can conclude that there was no further processing done on subject merchandise in the United States. Petitioners mention that Exhibit 29 of Union's home-market verification report, in which a warehousing provider enumerated its policies, together with the absence of certain warehousing-related charges on a sale examined at verification, suggests that further processing must have been performed. Petitioners also reiterate their argument that all of Union's U.S. sales should be reclassified as CEP sales due to the active role it alleges UADD played in selling subject merchandise.

Department's Position. This comment is moot as a result of our reclassification of most of Union's U.S. sales as CEP transactions, as explained above in the "Fair-Value Comparisons" section of this notice and in the Department's Position in response to Comment 20.

Final Results of Reviews

As a result of these reviews, we determine that the following margins exist for the period August 1, 1995 through July 31, 1996:

Producer/manufacturer/exporter	Weighted-average margin (percent)
Certain Cold-Rolled Carbon Steel Flat Products	
Dongbu	1.21
POSCO	0.63
Certain Corrosion-Resistant Carbon Steel Flat Products	
Dongbu	0.60
POSCO	0.53
Union	0.39

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. As discussed above, because the number of transactions involved in this review and other simplification methods prevent entry-by-entry assessments, we have calculated exporter/importer-specific assessment rates. With respect to both EP and CEP sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct the U.S. Customs Service to assess the resulting percentage margins against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period. While the Department is aware that the entered value of the reviewed sales is not necessarily equal to the entered value of entries during the POR (particularly for CEP sales), use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties which would have been determined if the Department had reviewed those sales of merchandise actually entered during the POR.

Furthermore, the following deposit requirements shall be effective upon publication of this notice of final results of review for all shipments of certain cold-rolled and corrosion-resistant carbon steel flat products from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates stated above, except for Union, which had a *de minimis* margin, and whose cash deposit rate is therefore zero; (2) for merchandise exported by manufacturers or exporters not covered in these reviews but covered in a previous segment of these proceedings, the cash deposit will be the company-specific rate published for the most recent segment; (3) if the exporter is not a firm covered in this review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the most recent segment of these proceedings; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or the LTFV investigation, the cash deposit rate will continue to be 14.44 percent (for certain cold-rolled carbon steel flat products) or 17.70 percent (for certain corrosion-resistant carbon steel flat products), which were the "all others" rates established in the LTFV investigations. *See Flat-Rolled Final* at 37191.

Article VI¶5 of the GATT (cited earlier) provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies as determined in *Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations; Certain Steel Products from Korea* (58 FR 37328—July 9, 1993), which is 0.05 percent *ad valorem*, will be subtracted from the cash deposit rate for deposit purposes.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as final reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations (19 CFR 353.34(d)). Timely notification of return/destruction of APO materials or conversion to judicial protective order is

hereby requested. Failure to comply is with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations (19 CFR 353.22).

Dated: March 9, 1988.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–6883 Filed 3–17–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–804]

Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands: Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 9, 1997, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands. This review covers one manufacturer/exporter of the subject merchandise to the United States during the period of review (POR), August 1, 1995, through July 31, 1996. We gave interested parties an opportunity to comment on our preliminary results. We also issued a supplemental questionnaire on December 18, 1997, on the issues of reimbursement and level of trade. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Linda Ludwig, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–0405 or (202) 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 9, 1997, the Department published in the Federal Register (62 FR 47418) the preliminary results of the administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products from the Netherlands (58 FR 44172, August 19, 1993), as amended pursuant to Court of International Trade (CIT) decision (61 FR 47871, September 11, 1996). On December 5, 1997, the Department published in the Federal Register (62 FR 64354) a notice of extension of the time limit for completion of this review until March 9, 1998. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise stated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 353 (1997).

Scope of This Review

The products covered by this review include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this review is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The POR is August 1, 1995, through July 31, 1996. This review covers entries of certain cold-rolled carbon steel flat products from the Netherlands by Hoogovens Staal B.V. (Hoogovens).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case and rebuttal briefs from the respondent (Hoogovens) and petitioners (Bethlehem Steel Corporation, U.S. Steel Company (a Unit of USX Corporation), Inland Steel Industries, Inc., Geneva Steel, Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, and Lukens Steel Company).

Comment 1: Petitioners argue that Hoogovens failed to segregate properly its warranty and technical service expenses into direct and indirect portions, as required under the law. Where a respondent fails to report warranty and technical service expenses in direct and indirect components, petitioners claim that the Department's practice is to treat the expenses as direct in the U.S. market, and to deny any adjustment in the home market. According to petitioners, the CIT has upheld this policy on several occasions. See *RHP Bearings* v. *United States*, 875 F. Supp. 854, 859 (CIT 1995).

Petitioners argue that the three categories of warranty and technical service expenses Hoogovens identified and reported as part of indirect selling expenses (the amount of credit notes issued to customers to satisfy claims of defective merchandise, the cost of returned merchandise, and travel

expenses of Quality Assurance personnel) are direct expenses, as they are variable expenses incurred as a direct and unavoidable consequence of sales, and vary with the quantity sold. Although Hoogovens claims that it cannot tie these expenses to particular sales, petitioners argue this does not excuse its improper reporting. According to petitioners, the Court of Appeals for the Federal Circuit held in *Torrington Co.* v. *United States*, 82 F.3d at 1051 (Fed.Cir. 1996), that the respondent's method of allocating or recording expenses does not alter the relationship of the expenses to the sales under consideration, and that its failure to keep adequate records does not justify treatment of direct expenses as indirect.

Hoogovens argues that the Department verified and accepted the manner in which it maintains these expenses in its accounting records and the methodology Hoogovens adopted to report these expenses in the investigation, the two previous reviews and the preliminary results of this review. Further, Hoogovens claims that the Department frequently treats warranty and technical service expenses as indirect, citing *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 2081, 2097 (January 15, 1997) ("AFBs 1997"). Hoogovens points out that warranty and technical service expenses incurred during the POR frequently relate to sales made before the POR. Accordingly, Hoogovens argues it is not possible for respondents to tie warranty expenses incurred during the POR to specific sales made during the POR, and therefore the Department's long-standing practice is to require respondents to report the warranty and technical service expenses actually incurred during the POR, regardless of when the sales were made. *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; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825, 11839 (March 13, 1997). Hoogovens argues that its warranty and technical service expenses are primarily claims for damaged merchandise, and that these expenses are not analogous to the types of expenses the Department generally considers to be variable and/or associated with particular sales, *i.e.*, post-sale price adjustments, rebates and discounts. Moreover, Hoogovens claims its historical experience shows there is no direct relationship between its warranty expenses and the total quantity of sales. Therefore, Hoogovens urges the Department to reject petitioners' argument and continue its practice of treating Hoogovens' warranty and technical service expenses as indirect selling expenses in both the U.S. and home markets.

Department's Position: We agree with petitioners that Hoogovens' warranty and technical service expenses should be considered as direct expenses. Contrary to Hoogovens' claim that it has reported these expenses as indirect selling expenses (ISE) in both of the previous reviews, in the first administrative review it reported them separately as direct warranty expenses allocated to subject merchandise on the basis of tonnage sold. There has been no change since then in the manner in which Hoogovens records these expenses in its accounting system, and Hoogovens did not explain why it reported them differently in the second and third reviews. The Department verified Hoogovens' worksheets for calculating U.S. warranty expenses in this review, in which it reported expenses on warranty claims and travel expenses of Quality Assurance personnel for subject merchandise. For home market warranty expenses, Hoogovens reported expenses on claims, returned/rejected material, and travel expenses for the home market reporting period of December 1993 through September 1996, and calculated the total warranty expenses as a percentage of sales.

As noted in AFBs 1997, the Department has long recognized that warranty expenses generally cannot be reported on a transaction-specific basis and an allocation is necessary. Although Hoogovens cites AFBs 1997 as supporting its treatment of warranty and technical service expenses as indirect, the relevant comment makes clear that the expenses the Department allowed as indirect were fixed expenses for salaries, benefits, rent, utilities and depreciation, rather than the variable warranty expenses reported in this case. Accordingly, for the final results of this review, we have calculated warranty expenses as a separate direct variable expense in both the U.S. and home markets and deducted them from the reported ISE in the respective markets. We allocated the expense to the metric tonnage sold, rather than gross price, to avoid the distorting effects of dumping prices in the U.S. market and of different terms of sale in the home market. As Hoogovens reported these expenses, we disagree with petitioners' argument that we should invoke adverse facts available and penalize Hoogovens by denying an adjustment to normal value (NV).

Comment 2: Petitioners argue that the Department should match Hoogovens' sales by level of trade (LOT) on the grounds that in the second review, Hoogovens initially claimed that it provided much greater sales support to its end-user customers than to service centers, but later reversed itself. Petitioners cite the statute's requirement that an adjustment to NV be made where a difference in LOT involves the performance of different selling activities and is demonstrated to affect price comparability, based on a pattern of persistent price differences between sales at different LOTs in the country in which NV is determined. Petitioners also cite the Department's regulations providing that the Secretary shall determine that sales are made at different LOTs if they are made at different marketing stages.

Petitioners argue that Hoogovens' end-user and service center customers are at different phases of marketing. In the second review, Hoogovens stated that steel service centers sell subject merchandise to the same types of end-user customers as Hoogovens, and concluded that end-user customers are further removed from Hoogovens' factory than the service centers. In this review, Hoogovens explained that its products are incorporated into the merchandise manufactured by the end-user customers, and that service centers function as distributors, who purchase steel from Hoogovens, and after slitting, rolling and/or cutting to length, sell essentially the same product to end-user customers.

Petitioners note that in the final results of the second review, the Department agreed with petitioners that end-users and service centers/distributors constitute different phases of marketing. *Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands*, 62 FR 18476, 18480 (April 15, 1997). Petitioners argue that information on the record in this review supports the same finding: Hoogovens' product brochure states that Hoogovens advises its customers regarding the best processing options; in describing the company's research activities, the brochure states that car manufacturers involve Hoogovens in the design of new cars, and that Hoogovens advises manufacturers on which steel types and qualities are best for their production process. Section A Response at Exhibit A–14, pp. 10–11 (Public Version).

Petitioners point out that Hoogovens claimed in this review that it is frequently aware of the nature of the product required by the end-user customers of its service center customers, and those downstream customers' processing capabilities, in order to provide the correct quality of steel. On this basis, Hoogovens claimed that it must supply the same support functions to service centers as to end-user customers. However, petitioners note, in the second review Hoogovens stated that steel service centers purchase steel from Hoogovens without having identified an end-user customer at the time of purchase. Hoogovens also stated that it provides far greater sales assistance to its end-user customers than to its service center customers, because the service centers do not know the ultimate use of the product at the time of purchase from Hoogovens. Petitioners point out that Hoogovens has not described any changes in the function or business of its service center customers that would explain these contradictory statements.

Petitioners argue that the Department should not assume from a respondent's failure to come forward with detailed information that there are no differences in selling functions, because it may be in the respondent's interest to refrain from claiming a LOT adjustment.

Hoogovens denies that respondents who do not claim different LOTs have a burden to prove the negative, *i.e.*, that no different LOTs exist. According to Hoogovens, the Department's practice is to verify the submitted data to ensure that respondent's position accurately reflects its sales practices. In the current review, Hoogovens argues, the Department asked extensive supplemental questions on the LOT issue, to which Hoogovens responded fully, and which the Department verified. Hoogovens claims that in virtually every other steel case in which the issue has arisen, the Department has concluded that the respondent's sales to end-users and steel service centers have been made at the same LOT.

According to Hoogovens, petitioners' entire LOT argument appears to be based on the facts of the second administrative review, rather than on the evidence on the record in this review. However, Hoogovens points out, petitioners fail to note that the Department concluded that Hoogovens export price (EP) sales and home market sales were made at a single LOT. The Department has consistently found in steel cases that sales to end-users and service centers, while representing sales at different phases of marketing, are not at different LOTs.

Hoogovens argues that petitioners' quotations from Hoogovens' product brochures are irrelevant on the grounds that advertising brochures are general descriptions of a company's operations and cannot constitute persuasive evidence of actual selling functions performed for different customers. According to Hoogovens, petitioners' arguments regarding different LOTs are almost entirely focused on alleged different selling functions performed by Hoogovens for automotive customers, rather than on differences between other end-users and service centers. Petitioners omit that the functions performed for automotive customers are also described in the brochures as available for other customers. Product/market development employees are described as working closely with sales teams, product line employees and R&D to deliver the best possible product without regard to customer category. Hoogovens claims this is consistent with its statement in its Supplemental Response (January 24, 1997, at 7) that "it is increasingly important for Hoogovens to provide as much product development assistance as possible to its steel service center customers to enable the service centers to maintain their relationships with their end-user customers."

Petitioners also argue that there are price differences by LOT. According to Hoogovens, the Department has consistently held that price differences are, by themselves, not sufficient to justify a finding of different LOTs. Hoogovens cites AFBs 1997, 62 FR at 2109, where the Department stated: "In any event, differences in prices do not determine the existence of levels of trade." Hoogovens further argues that as petitioners have allegedly failed to establish that there are different LOTs based on Hoogovens' selling functions, the Department need not consider the relevance of differences in price levels. Moreover, Hoogovens points out that petitioners have not argued that there is any consistent pattern of price differences on Hoogovens reported EP sales. Hoogovens therefore concludes that petitioners' arguments cannot sustain a finding that there are different LOTs in the U.S. market. Further, to the extent that petitioners are arguing that there is one LOT in the U.S. market and two LOTs in the home market, Hoogovens points out that petitioners have not explained to which alleged home market LOT the U.S. LOT should be matched, or how the Department should make any LOT adjustment between the U.S. LOT and either of the two alleged home market LOTs.

In its January 16, 1998, response to a supplemental questionnaire issued by the Department, Hoogovens reiterated prior claims that it provides services based on the ultimate end use of the product rather than the identity or category of the customer, and that it provides the same services to all customers in the home market. Hoogovens maintains that it is frequently aware of the nature of the end-use for which its products are required. Hoogovens also provided examples of its product development activities.

Petitioners commented on this response on January 30, 1998. Petitioners continue to argue that Hoogovens failed to substantiate its allegation that all of its customers were at the same LOT. Petitioners claim that Hoogovens' response consists of vague, unsupported assertions, tallies of customer visits and a small selection of customer visit reports that were chosen by Hoogovens to support its claim.

Department's Position: Under the URAA, a level of trade adjustment can increase or decrease normal value. SAA at 159. Accordingly, the SAA directs Commerce to "require evidence from the foreign producers that the functions performed by the sellers at the same level of trade in the U.S. and foreign markets are similar, and that different selling activities are actually performed at the allegedly different levels of trade." *Id.* (Emphasis added). See also Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Germany: Preliminary Results of Antidumping Duty Administrative Review, 62 Fed. Reg. 47446, 47450 (September 9, 1997). Thus, to properly establish the LOT of the relevant sales, Commerce specifically requests LOT information in every antidumping proceeding conducted under the URAA, regardless of whether a respondent sells solely to one nominal customer category, such as service centers or end-users. Moreover, consistent with that approach, we note that of necessity, the burden is on a respondent to demonstrate that its categorizations of LOT are correct. Respondent must do so by demonstrating that selling functions for sales at allegedly the same level are substantially the same, and that selling functions for sales at allegedly different LOTs are substantially different.

As a matter of policy, the Department cannot allow respondents to form their own conclusions on LOT and then submit the data to support their conclusions. Rather, it is the Department's responsibility, not respondent's, to determine LOTs. It is

not that respondents have the burden to "prove the negative," as Hoogovens states, but that respondents have a burden to demonstrate that there is only one LOT. We make no presumption as to the number of LOTs in a market. Rather, the respondent must provide information which satisfactorily demonstrates what LOTs exist. Respondent's failure in this case to provide detailed LOT information leads the Department to conclude that it has not met its burden of proof to demonstrate that there is in fact only one LOT, particularly in light of other information indicating the existence of two LOTs.

To make a proper determination as to whether home market sales are at a different LOT than U.S. sales, the Department examines whether the home market sales are at different stages in the marketing process than the U.S. sales. We review and compare the distribution systems in the home market and U.S. export markets, including selling functions, class of customer, and the extent and level of selling expenses for each claimed LOT. An analysis of the chain of distribution and of selling functions substantiates or invalidates claimed LOTs based on customer classifications. Different LOTs necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the LOT. Different LOTs are characterized by purchasers at different places in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them.

When we compare U.S. sales to home market sales at a different LOT, we make a level-of-trade adjustment if the difference in LOT affects price comparability. We determine any effect on price comparability by examining sales at different LOTs in a single market, the home market. To quantify the price differences, we calculate the difference in the average of the net prices of the same models sold at different LOTs. We use the average difference in net prices to adjust the NV when it is based on a LOT different from that of the export sale. If there is a pattern of no price differences, then the difference in LOT does not have a price effect, and no adjustment is necessary.

As stated above, the Department begins its LOT analysis with an examination of the different distribution systems, or channels of trade. Normally, transactions at different LOTs occur at different points in the distribution system, which is reflected in the commercial designation of customer categories, such as distributor or service center, and the selling functions that support such commercial designations. In the present case, Hoogovens sold to end-users and service centers in both the U.S. and home markets. It is undisputed that these transactions constitute sales through different channels of trade.

With respect to the selling functions performed, we conducted a comprehensive examination of the available information provided by Hoogovens in this case. The Department requested information on selling functions in the original questionnaire and two supplemental questionnaires. Based upon the information submitted on the record, we are unable to determine conclusively whether the specific selling functions performed by Hoogovens with respect to sales to the service centers and end-users reflect sales at the same LOT.

In this review, Hoogovens has repeatedly claimed that it provides the same technical and warranty services to all customers in all markets. *See e.g.*, January 24, 1997 response at 7. However, as the Department has stated, different LOTs may be established where a respondent performs functions that are the same with respect to all markets and all customers, as Hoogovens claims in this case. The critical element in such a case is the degree to which the selling functions are performed.

Significantly, on this important issue, Hoogovens stated in the previous review that "increased quality assurance and product development assistance" may be the basis for treatment of end-user sales and service center sales as different LOTs. January 24, 1997 response at 12–13 (citing to its Section A response in the 1994–95 review). In this review, Hoogovens claims that the quantitative aspect of the selling functions performed varies only by customer, not customer category. Hoogovens also states that the services performed vary based upon the end-use of the product, but that performance of the same services does not vary by customer category. *Id. at 11.*

The statements and evidence Hoogovens has elected to place on the record indicate an ability to isolate data on selling functions and determine how they vary in kind and degree by customer category or end-use. Despite that apparent ability, Hoogovens declined to provide all of the detailed information which the Department requested for purposes of conducting a LOT analysis. As noted above, respondent's failure to provide detailed LOT information has left the Department with an inadequate record on this issue. For example, the Department specifically requested that Hoogovens "describe in detail the nature and extent of the selling functions performed." January 24, 1997 response at 9. The Department required that "[f]or each selling function, describe in detail whether it is performed to a greater degree, or in a different manner, depending on customer type." *Id.* By its own admission, Hoogovens performed varying levels of technical and quality assurance assistance. Nevertheless, Hoogovens did not provide the information necessary for the Department to make a proper evaluation of LOT and assess the assertions made by Hoogovens. Because Hoogovens has not provided an adequate explanation of the services it performs, nor demonstrated that variations in services supplied are not related to customer category, the Department is unable to assess the validity of Hoogovens' claim that it performs the same services for all customers in all markets.

Furthermore, other evidence on the record suggests that there are different selling functions performed based on customer category in this case. For example, while Hoogovens claims to provide the same support to all customers, it acknowledges that one large service center customer in the home market has itself received several important quality certifications in the automotive and other industries. Hoogovens claims that these certifications require assurance of chemical and mechanical properties. However, other information on the record shows that this customer also provides special delivery services, as well as further manufacturing. In addition, this customer itself guarantees the quality of its products and has a metallurgist on its staff. All of this suggests that there is less need for Hoogovens to provide technical support services to this service center and its customers than to Hoogovens' own end-user customers. Further, despite our requests, Hoogovens did not provide any detailed analysis or description of the precise nature of product research and technical support Hoogovens provides to various customers and amount of expenses incurred.

Further, Hoogovens' responses appear contradictory. Hoogovens claims that its quality assurance department has the same representatives assigned to all home market customers. *See* January 16, 1998 submission at 19. But Hoogovens also states that quality assurance representatives are assigned on the basis of the ultimate application of the

product. *Id.* The Department is unable to determine how these representatives are assigned and whether their assignments reflect a greater level of technical and quality assurance assistance to end-users and whether greater expenses are incurred for either service centers or end-users. Moreover, Hoogovens has stated (1) that service centers frequently do not know the end-use of the product at the time of purchase from Hoogovens and (2) that service centers assume the risk of finding a customer for the material. *See* January 24, 1997 submission at 14. These statements demonstrate that Hoogovens frequently does not know the identity of the service center's customer and thus cannot provide technical services in support of such sales. Rather, these statements support Hoogovens' earlier position that it provides far greater sales assistance to end-user customers than to its service center customers.

Finally, we find the evidence concerning the number of visits to customers and the meetings with customers to be unpersuasive. The number of visits is not a useful tool for examination. In some instances, Hoogovens has common customers with service centers, thereby confusing the issue of whether the visit relates to products purchased from Hoogovens or from the service center. Second, the evidence on meetings with customers submitted by Hoogovens does not establish that technical services and quality assurance assistance are "the same for all customers." A comparison of the selling functions performed based upon a full description of such functions is necessary for the Department to make that conclusion. Further, the limited number of reports relative to the size of the customer base does not provide an adequate reflection of the circumstances in this case and cannot substitute for the description of the selling functions requested by the Department. Thus, Hoogovens has failed to meet its burden of proof establishing that there is only one LOT in the home market.

In sum, the evidence on the record demonstrates that, both in the home market and in the United States, sales occur at two different stages in the marketing process and to two different customer categories (*i.e.*, service centers and end-users). Significantly in this case, the Department has also determined that a pattern of consistent price differences exists with respect to sales occurring at these two different stages of marketing in the home market. In fact, Hoogovens has acknowledged that one primary factor governing prices charged to end-users and service centers is the "historic commercial reasons related to the relative functions of service centers and end-users." January 24, 1997 submission at 13. Therefore, on the basis of the facts available, we are treating EP and home market sales to end-users as a different LOT than home market sales to service centers. Further, since the basis for distinguishing LOT is the provision of technical and warranty services, and the LOT of the CEP sales is the LOT of the affiliated service centers, we are treating all CEP sales as sales to service centers and this LOT as equivalent to the home market service center LOT. Where it is not possible to match a U.S. sale to a home market sale at the same LOT, we have made a LOT adjustment based on our comparison of the weighted-average net prices, by product, of merchandise sold in the home market to service centers to the weighted-average net prices, by product, of merchandise sold to end-users. When a U.S. sale to an end-user is compared to a home market sale to a service center, the NV is adjusted upward; conversely, when a U.S. sale to a service center is compared to a home market sale to an end-user, the NV is adjusted downward. The CEP offset issue is addressed in the following comment.

Comment 3: Hoogovens argues that in the preliminary results the Department improperly failed to make a CEP offset adjustment to NV pursuant to section 773 (a)(7)(B) of the Act when comparing Hoogovens' reported CEP sales to NV, and that this failure was based on a misunderstanding of the facts of this review and on a misinterpretation of both the statute and the Department's current practice.

As the Department explained in the preliminary results, in identifying the LOT for CEP sales, its current policy is to consider only the selling activities reflected in the U.S. price after deduction of expenses and profit under section 772(d) of the Act. 62 FR 47421. In comparing the CEP LOT to home market sales, the Department considers the selling functions reflected in the starting price of the home market sales before any adjustments. According to Hoogovens, the Department makes a CEP offset when it finds after this comparison that the unadjusted home market price is at a more advanced LOT than the adjusted CEP.

Hoogovens argues that the Department's conclusion in the preliminary results that there were no differences between the adjusted CEP and the unadjusted home market price is not supported by the facts. 62 FR 47421. Hoogovens claims that in this case, this comparison "necessarily results in a comparison of sales at different levels of trade," because the starting price of the home market sales includes "many selling activities not reflected in the adjusted CEP price." These include indirect selling activities, indirect warranty and technical service expenses, and freight and delivery arrangements. All of these types of expenses, incurred both in the Netherlands and the United States, have been deducted from the net CEP used to establish the LOT for CEP sales. Hoogovens concludes that the home market LOT must be deemed to be a different, more advanced LOT than the adjusted CEP LOT. Case Brief at 10.

Hoogovens further argues that there were no sales in the home market at a LOT equivalent to the CEP LOT, and that all sales in the home market were at the same LOT. Hoogovens concludes that in the absence of data to quantify a LOT adjustment to account for the difference between the CEP LOT and the home market LOT, the Department should make a CEP offset adjustment to NV. Case Brief at 11.

Petitioners argue that the Department properly denied a CEP offset adjustment, inasmuch as Hoogovens has failed to provide information in the current review that would allow the Department to determine what selling functions are reflected in the price of either home market sales or the adjusted CEP. The Department's questionnaire instructed Hoogovens to provide a chart showing all selling functions provided for each customer category, and a list separately reporting those expenses deducted from U.S. price, with a narrative explanation detailing each selling function noted within each customer group. Questionnaire at Addendum I (Question 9.B.). Hoogovens failed to provide any chart regarding CEP sales, or any list or meaningful narrative separately detailing the expenses and selling functions deducted from U.S. price. See Section A Response at 20 (Public Version). Petitioners argue further that Hoogovens also failed to provide any meaningful analysis of whether its selling functions performed in the Netherlands for its U.S. sales were associated with economic activities in the United States, whether these functions related to the sale to the unaffiliated customer, and whether the expenses associated with these functions should be deducted from CEP. Petitioners therefore conclude that the Department has no basis to determine that there is a distinct CEP LOT.

Petitioners further comment that none of the three selling activities cited by Hoogovens, *i.e.*, indirect selling activities, indirect warranty and

technical service expenses, and freight and delivery arrangements, provides any basis for treating the CEP as a distinct LOT. In the first place, petitioners point out, the Department did not deduct "indirect selling activities" incurred in the Netherlands from CEP. See Preliminary Results, 62 FR at 47419. This was one of the reasons the Department did not allow an offset in the preliminary results—namely, because of its finding that the indirect selling functions incurred at the sales office in IJmuiden were common to both the adjusted CEP and the home market price.

Second, petitioners continue, Hoogovens' warranty and technical service expenses are not properly considered as indirect expenses at all. Accordingly, the Department may choose to account for such expenses under the circumstance of sale provision, in which case they are not removed from the adjusted CEP for purposes of the LOT analysis. Even if they are removed from the adjusted CEP, petitioners point out that Hoogovens has not shown that the significance of these functions would justify a finding of different LOTs.

Finally, petitioners argue, costs and expenses associated with freight and delivery are not deducted under section 772(d) and thus are not removed from the adjusted CEP for purposes of the LOT analysis. Neither are they removed from the home market price for purposes of that analysis. See the Department's regulations, 62 FR at 27370; 19 U.S.C. § 1677b(a)(6). Petitioners conclude that Hoogovens' assertion that these expenses are reflected in the home market starting price but deducted from the adjusted CEP is therefore false; on the contrary, such expenses are common to both the adjusted CEP and the starting price in the home market, and provide no basis for a CEP offset adjustment.

Department's Position: Section 773(a)(7)(B) of the Act provides for a CEP offset when: (1) NV is determined at a different LOT than the CEP LOT; and (2) the data available do not provide an appropriate basis for quantifying the amount of a LOT adjustment. Section 351.412(f)(1) of the Department's new regulations (62 FR 27296; May 19, 1997) provides that the Department will grant a CEP offset only where NV is determined at a more advanced LOT than the CEP LOT, and despite the fact that respondent has cooperated to the best of its ability, the data available do not provide an appropriate basis to determine whether the difference in LOT affects price comparability. "More advanced LOT" refers to a more advanced stage of marketing, which generally means that the home market LOT is more remote from the factory door than the CEP LOT. A more advanced, or remote, LOT is typically characterized by more selling activities and greater selling expenses.

Section 773(a)(7)(B) of the Act defines the CEP offset as the amount of ISE included in NV, up to the amount of ISE deducted in calculating the CEP. ISE in the CEP offset are selling expenses, other than direct selling expenses or assumed expenses, that the seller would incur regardless of whether particular sales were made, but that are attributable, in whole or in part, to such sales.

We adjusted the starting prices of the affiliated service center's sales to their first unaffiliated customers by deducting U.S. selling expenses, costs of further manufacturing and an amount for profits, which yields an estimate of the prices Hoogovens would have charged the service centers if they were not affiliated.

Hoogovens has suggested that the CEP is in effect an ex-factory transfer price to its U.S. affiliate. This is an inaccurate characterization for several reasons. First, transfer prices do not enter into our analysis because the CEP is a calculated price derived from the price to the first unaffiliated customer in the United States. Second, the deductions we make under section 772(d) of the Act do not include all possible direct and indirect selling expenses. These deductions remove only expenses associated with economic activities in the United States that support the U.S. resale. The CEP is not a price exclusive of all selling expenses because it contains the same type of selling expenses as a directly observed export price. Accordingly, the Department's new regulations clearly direct us not to deduct from the starting price any expense "related solely to the sale to an affiliated importer in the United States," *i.e.*, those expenses that support the sale from the exporter to its U.S. affiliate. 19 CFR 351.402. We may, however, make a circumstances of sale adjustment to normal value for such expenses, if they are direct expenses, under section 773(a)(6)(C)(iii) of the Act.

Petitioners correctly observe that Hoogovens did not answer the Department's questions on LOT with regard to CEP sales, and did not provide an analysis of selling functions associated with CEP sales, nor show how they differ from home market sales. Consequently, the Department has based its analysis in the final results on the facts otherwise on the record in this review.

In calculating CEP, the Department deducted the imputed credit expenses incurred by the Rafferty-Brown companies as direct selling expenses. Hoogovens' affiliated companies did not report any warranty or technical service expenses for the U.S. resales, and we did not deduct any allocated warranty expenses incurred in the Netherlands for sales to the Rafferty-Brown companies. In accordance with section 772(d)(1), the Department deducted ISE and imputed inventory carrying costs ("ICC") incurred in the United States by the Rafferty-Brown companies for sales to the first unaffiliated buyers to arrive at the CEP. For the final results of this review, the Department did not deduct ISE and ICC incurred in the Netherlands, nor expenses of the U.S. sales office from the adjusted CEP on the grounds that these are expenses associated with the sale to Hoogovens' U.S. affiliates, rather than with the sales by the affiliates to the first unaffiliated buyers. Thus, the CEP includes Hoogovens' warranty and technical service expenses for U.S. sales, as well as ISE, including the expenses of the sales offices in IJmuiden and New York, and ICC incurred in connection with the sale to the affiliated service center.

Hoogovens' starting price for home market sales includes direct warranty and technical service expenses, ICC, the expenses of the sales office in IJmuiden, and other indirect selling expenses incurred for home market sales. Thus, for the purposes of the LOT analysis, there is no distinguishable difference between the selling functions included in the home market starting price and the selling functions included in the CEP. On the basis of this analysis, the Department has determined that there is no basis for Hoogovens' claim that home market sales are at a different, more advanced LOT than the adjusted CEP sales. When a CEP sale could not be matched to a home market sale to a service center, we made a LOT adjustment. Therefore, the issue of a CEP offset is moot.

Comment 4: Hoogovens claims that the Department's decision in the preliminary results to deny an offset to the reported U.S. ISE for the cost of financing cash deposits of estimated antidumping duties during the POR is incorrect, and that the Department should continue to grant this adjustment for the reasons stated in the bearings determinations. *See* 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; Final Results of Antidumping Duty

Administrative Reviews and Termination in Part, 62 FR 11825, 11826–30 (March 13, 1997).

Hoogovens cities the preliminary results of this review, in which the Department stated that there may not be opportunity costs associated with paying cash deposits and that some respondents may not require loans to cover deposits. 62 FR at 47419 (September 9, 1997). Under this rationale, according to Hoogovens, the Department should not make adjustments for the opportunity costs of carrying either inventory or credit. Hoogovens argues that the opportunity cost of tying considerable sums up as cash deposits exists regardless of whether a loan must be obtained to cover the cost.

Petitioners urge the Department to adhere to its decision to deny this adjustment, supporting the Department's arguments that it is unclear that opportunity costs are incurred, given the fungibility of money, and that borrowing funds for one activity may simply mean that funds need not be borrowed for another activity. Petitioners argue that the difficulty in determining whether such opportunity costs exist, how such costs (if any) should be quantified, and whether such costs are appropriately accounted for in the calculation of ISE, makes an adjustment inappropriate. Petitioners contend that the Department has a longstanding policy of not making an adjustment to account for the time value of every deduction from sales price, such as freight charges, rebates, *etc.* Similarly, petitioners deduce, the multitude of arrangements whereby cash deposits are paid would make an inquiry into opportunity costs associated with such deposits extraordinarily complicated and in all likelihood inaccurate.

Petitioners further argue that the obligation to pay cash deposits arises only where a respondent has engaged in unfair trade activity in the United States, something that is within the respondent's control. Moreover, under the statute, interest accrues only for any overpayment or underpayment of cash deposits, meaning that the importer does not receive interest for the amount of its deposits that reflect the duty finally determined. As such, petitioners argue, the payment of cash deposits cannot be seen merely as an expense incident to an antidumping proceeding, such as lawyers' fees; rather, such payment reflects a current obligation resulting from a respondent's unfair trading activity in the United States. In petitioners' view, allowing a respondent to reap a benefit in its margin calculation based on payment of such deposits would be inconsistent with the fundamental goal of the statute—*i.e.*, to discourage unfair trade and provide a level playing field on which domestic producers can compete.

According to petitioners, the facts of the present case demonstrate why an adjustment for interest in financing cash deposits is inappropriate: Hoogovens has sought to reduce the ISE of the Rafferty-Brown companies (Hoogovens' affiliated U.S. service centers) based on "imputed" interest in financing cash deposits, notwithstanding the fact that neither company ever paid any cash deposits. In fact, petitioners point out, Hoogovens acknowledged that "HSUSA, as sales agent and importer of record for Hoogovens' sales, paid cash deposits on entries for sales during the period of review, using funds transferred periodically by HSBV to HSUSA for that purpose." Hoogovens' Response to the Department's Supplemental Questionnaire (Public Version, June 26, 1997 at 1).

Petitioners argue that the Rafferty-Brown companies incurred no expenses, imputed or otherwise, related to the payment of cash deposits, and there is no basis in fact or logic for making any adjustment to their ISE. Petitioners conclude that Hoogovens' claim points to a fundamental defect in the Department's past practice: parties could claim adjustments without any showing that they incurred opportunity costs, that such costs have any relationship to their reported ISE, or how such costs may be quantified.

Department's Position: We agree with petitioners that we should deny an adjustment to Hoogovens' U.S. ISE for expenses which Hoogoven's claims are related to the financing of cash deposits. The statute does not contain a precise definition of what constitutes a selling expense. Instead, Congress gave the administering authority discretion in this area. It is a matter of policy whether we consider there to be any financing expenses associated with cash deposits. We recognize that we have, to a limited extent, allowed deductions of such expenses in past reviews of the orders on AFBs. However, we have reconsidered our position on this matter and have concluded that this practice is inappropriate.

We have long maintained, and continue to maintain, that antidumping duties, and cash deposits of antidumping duties, are not expenses that we should deduct from U.S. price. To do so would involve a circular logic that could result in an unending spiral of deductions for an amount that is intended to represent the actual offset for the dumping. We have also declined to deduct legal fees associated with participation in an antidumping case, reasoning that such expenses are incurred solely as a result of the existence of the antidumping duty order. Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, 57 FR 28360 (June 24, 1992). Underlying our logic in both these instances is an attempt to distinguish between business expenses that arise from economic activities in the United States and business expenses that are direct, inevitable consequences of the antidumping duty order.

Financial expenses allegedly associated with cash deposits are not a direct, inevitable consequence of an antidumping duty order. As we stated in the preliminary results: "money is fungible within a corporate entity. Thus, if an importer acquires a loan to cover one operating cost, that may simply mean that it will not be necessary to borrow money to cover a different operating cost." See *Preliminary Results* at 47,419. Companies may choose to meet obligations for cash deposits in a variety of ways that rely on existing capital resources or that require raising new resources through debt or equity. For example, companies may choose to pay deposits by using cash on hand, obtaining loans, increasing sales revenues, or raising capital through the sale of equity shares. In fact, companies face these choices every day regarding all their expenses and financial obligations. There is nothing inevitable about a company having to finance cash deposits and there is no way for the Department to trace the motivation or use of such funds even if it were inevitable.

In a different context, we have made similar observations. For example, we stated that "debt is fungible and corporations can shift debt and its related expenses toward or away from subsidiaries in order to manage profit" (see Ferrosilicon from Brazil; Final Results of Antidumping Duty Administrative Review, 61 FR at 59412, regarding whether the Department should allocate debt to specific divisions of a corporation).

So, while under the statute we may allow a limited exemption from deductions from U.S. price for cash deposits themselves and legal fees associated with participation in dumping cases, we do not see a sound basis for extending this exemption to financing expenses allegedly associated with financing cash deposits. By the same token, for the reasons stated above,

we would not allow an offset for financing the payment of legal fees associated with participation in a dumping case.

Finally, we also determine that we should not use an imputed amount that would theoretically be associated with financing of cash deposits. There is no real opportunity cost associated with cash deposits when the paying of such deposits is a precondition for doing business in the United States. Like taxes, rent, and salaries, cash deposits are simply a financial obligation of doing business. Companies cannot choose not to pay cash deposits if they want to import nor can they dictate the terms, conditions, or timing of such payments. By contrast, we impute credit and inventory carrying costs when companies do not show an actual expense in their records, because companies have it within their discretion to provide different payment terms to different customers and to hold different inventory balances for different markets. We impute costs in these circumstances as a means of comparing different conditions of sale in different markets.

Comment 5: Petitioners argue that the Department should change its methodology for calculating profit for CV and CEP and revert to the method used in the previous review, accepting Hoogovens' reported profit for CV, which Hoogovens calculated by subtracting the weighted-average actual cost from the weighted-average net price for home market sales of subject merchandise during the POR. Hoogovens divided the profit per ton by the weighted-average actual cost to arrive at the reported profit rate. Petitioners object that instead of using Hoogovens' reported profit rate, the Department calculated it using the 1995 Profit and Loss Statement for Hoogovens' Steel Division with respect to the same general category of products as the subject merchandise, which was the same source the Department used to calculate the CEP profit ratio under section 772(d)(3) of the Act.

Petitioners argue that the Department's recalculation of the CV profit figure is unreasonable, and does not account for the actual amounts incurred for profits in connection with the production and sale of the foreign like product, as required by the statute. In addition, petitioners claim, the Department's use of a financial report that includes non-subject merchandise to calculate the CEP profit ratio is unnecessary and inconsistent with the statutory preference for information relating only to the subject merchandise and foreign like product. 19 U.S.C. § 1677a(f)(2)(C). Further, petitioners argue, there is no reason why the Department should use the same profit figure for both CV and CEP, particularly given that the two figures are typically calculated on a different basis. Petitioners claim that Hoogovens' sales and CV files contain all of the information needed to calculate the CEP profit ratio, with the exception of the cost of goods sold of merchandise sold in the home market, and that this figure can be obtained using the data supplied by Hoogovens in its calculation of CV profit.

Hoogovens argues that the Department's calculation of CEP profit was consistent with its policy bulletin, Calculation of Profit for Constructed Export Price Transactions, Policy Bulletin No. 97/1 (September 4, 1997), and should not be changed for the final results. This bulletin explains that section 772(f) of the Act provides a hierarchy of three alternative methods for calculating CEP profit and that the first of these alternatives "reflects the expense data available to the Department when conducting a sales below cost investigation." *Id.* at 4. Hoogovens points out that since there is no below-cost investigation in this case, the Department must use the next alternatives, described in the policy bulletin as "expense and profit information derived from financial reports provided by the respondent." As explained in the Department's analysis memorandum, the Department therefore "derived total profit and total expenses from the audited 1995 profit and loss statement of Hoogovens' steel division (Hoogovens Staalbedrijf)," which was the "narrowest category for which [the Department] had information on the record in this review." Analysis Memorandum (September 2, 1997) at 7.

Hoogovens also argues that petitioners' suggested methodology of using information from Hoogovens' CV files to calculate the cost of goods sold in the home market may be inaccurate because of differences in product mix and timing.

Department's Position: We disagree with petitioners that we should use cost data from the CV file to calculate CEP profit. The calculation of total actual profit under section 772(f)(2)(D) of the statute includes all revenues and expenses resulting from the respondent's U.S. sales and home market sales. However, the calculated profit for CV is only the profit on Hoogovens' home market sales of subject merchandise. It is also inappropriate to use the calculated weighted-average cost for CV as a substitute for the cost of goods sold in the home market, as it includes only the costs of the products sold to the U.S. market, and thus is not representative of the home market product mix. Moreover, because Hoogovens sells to some customers under long-term contracts, the period for reporting home market sales is much longer than the POR. Consequently, there may be more variation in the costs of home market sales than in the costs of U.S. sales, even for the same products. However, the Department agrees with petitioners that it should use the CV profit submitted by Hoogovens to calculate CV instead of the profit rate the Department calculated for the preliminary results, because the former more accurately reflects the scope of merchandise covered in this review. For the final results, the Department used the weighted average profit from the audited 1995 and 1996 profit and loss statements of Hoogovens' steel division to calculate CEP profit, and Hoogovens' reported CV profit ratio to calculate CV.

Comment 6: Hoogovens argues that the Department improperly deducted from CEP expenses incurred in the Netherlands that are attributable to U.S. sales. For the preliminary results, the Department recalculated Hoogovens' reported ISE to exclude ISE incurred in the Netherlands and allocated to U.S. sales of subject merchandise, on the grounds that they did not relate to economic activities in the United States. 62 FR at 47419. The Department then deducted from CEP the expenses of Hoogovens' U.S. sales office and warranty expenses for U.S. sales claimed as indirect. According to Hoogovens, these expenses were not incurred with respect to sales by the Rafferty-Brown companies to the first unaffiliated customers, and these expenses should therefore not be deducted from CEP.

Hoogovens cites the Statement of Administrative Action Accompanying the Uruguay Round Agreements (SAA) as stating that CEP will be calculated by reducing the price of the first sale to an unaffiliated customer in the United States by certain expenses and profit associated with economic activities occurring in the United States. SAA at 823. Hoogovens argues that the Department has consistently interpreted this provision to permit the deduction from CEP only of those expenses incurred with respect to the sale to the unaffiliated CEP customer. According to Hoogovens, the activities of its U.S. sales office, HSUSA, in connection with Hoogovens' U.S. sales are limited to the sales to the unaffiliated customer in the case of EP sales, and the sales to the affiliated Rafferty-Brown companies in

the case of CEP sales. Because HSUSA plays no role in the sales by the Rafferty-Brown companies to the unaffiliated customer, Hoogovens argues that the Department should not deduct HSUSA's expenses from U.S. price in CEP situations. See Grey Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 17148, 17168 (April 9, 1997).

Similarly, Hoogovens argues, warranty and technical service expenses incurred in the Netherlands for U.S. sales are incurred primarily with respect to EP sales and should therefore not be deducted in calculating U.S. price for CEP sales. Hoogovens claims that although some of these expenses were incurred in connection with sales to the Rafferty-Brown companies, these expenses were not related to the Rafferty-Brown companies' sales to the unaffiliated CEP customers. Hoogovens concludes that under the Department's interpretation of section 772(d), these expenses cannot be said to constitute economic activity in the United States.

Petitioners argue that expenses incurred by HSUSA must be deducted from CEP, citing the statute's requirement that the CEP be reduced by "any selling expenses" that are "incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise." 19 U.S.C. § 1677a(d). According to petitioners, each of the cases Hoogovens relied upon in its argument dealt with ISE incurred in the home market, and the Department's practice is to deduct such expenses from CEP only where it finds that they are associated with U.S. economic activity, and that they do not relate solely to the sale to an affiliated importer. However, petitioners argue, none of the cases cited by Hoogovens holds that selling expenses incurred in the United States by a U.S. affiliate will not be deducted from CEP.

Department's Position: We agree with respondent. The expenses deducted under section 772(d) of the Act and the profit associated with those expenses represent activities undertaken in the United States to support the U.S. resale to an unaffiliated customer. Generally, these activities are undertaken by the affiliated importer and occur after the transaction between the exporter and the importer.

In the current case, the importer of record, HSUSA, is not a reseller. HSUSA does not take title to the subject merchandise; rather, in the case of CEP sales, the merchandise is shipped directly by Hoogovens to the affiliated service centers, the Rafferty-Brown companies. The Department's new regulations clearly direct us not to deduct from the starting price any expense "related solely to the sale to an affiliated importer in the United States"; *i.e.*, those expenses that support the sale from the exporter to its U.S. affiliate. 19 CFR 351.402. In this case, the expenses incurred by HSUSA, which are consolidated with those of Hoogovens in the latters accounting system, are related to sales to the Rafferty-Brown companies and to export price sales. Hoogovens reported these expenses as part of the selling expenses incurred in the home market to support U.S. sales. Therefore for these final results, we have deducted only the reported ISE incurred by the Rafferty-Brown companies from CEP.

Comment 7: Hoogovens argues that the Department's presumption that duty absorption will occur on those sales for which the Department found margins, together with its insistence that absorption can only be rebutted by evidence of a separate agreement that the unaffiliated customer will be responsible for antidumping duties, are contrary to Congress' intent that an analysis be performed to determine whether duty absorption is occurring. According to Hoogovens, had Congress intended that duty absorption would be presumed in all cases in which margins exist, Congress could have instructed the International Trade Commission (ITC) to assume that absorption occurred with respect to all sales on which margins were found, obviating the need for the Department to make an absorption determination.

Hoogovens further argues that there is no basis in either law or logic for ignoring the majority of the sales on which no margins were found. According to Hoogovens, the issue of duty absorption must be based on an examination of the respondent's overall sales practices in the U.S. market, including all sales that are examined by the Department in its reviews. The antidumping law does not require that absorption be determined either on a sale-specific basis or solely by reference to sales on which margins exist. Hoogovens contends that the Department should not find that absorption is occurring where a respondent sells to unaffiliated customers at prices which are high enough to cover any antidumping duties that may be assessed on some of the respondent's sales. The downward trend in Hoogovens' margins should be considered as *prima facie* evidence that Hoogovens is passing antidumping duties on to its customers. Finally, Hoogovens concludes, given that it is collecting from its unaffiliated customers revenue in excess of the fair value of the subject merchandise that is more than twice the amount of the antidumping duties calculated in the preliminary results of this review, it is unreasonable to conclude that it is absorbing any of the antidumping duties to be assessed in this review.

Petitioners argue that Hoogovens' objections are untimely and incorrect. In its preliminary results, the Department stated that if interested parties wish to submit evidence that the unaffiliated purchasers in the United States will pay the ultimately assessed duty, they must do so no later than 15 days after the publication of the preliminary results. 62 FR at 47422. Hoogovens submitted no evidence within the time allotted by the Department to rebut the presumption that absorption of antidumping duties is occurring. According to petitioners, in another case the Department specifically rejected the argument that it should consider sales with prices above fair value in conducting its absorption inquiry:

> We disagree * * * that negative and positive margins should be aggregated. * * * The Department treats so-called "negative" margins as being equal to zero in calculating a weighted-average margin because otherwise exporters would be able to mask their dumped sales with non-dumped sales. It would be inconsistent on one hand to calculate margins using positive margin sales which is the Department's practice, and then argue, in effect, that there are no margins because credit should be given for non-margin sales. Thus, those sales which are used to determine whether there are margins should also be used to determine whether there is duty absorption. Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom, Final Results of Antidumping Duty Administrative Reviews, 62 FR 18744, 18745 (April 17, 1997).

Petitioners contend that the Department's policy makes perfect sense, in that under Hoogovens' approach, respondents could shield unfairly traded sales of a particular product through sales of other products that happen to be fairly traded. According to petitioners, this would open an enormous loophole in the law.

Department's Position: We agree with petitioners for the reasons cited, and have not changed our approach for the final results of this review. We have determined that there are dumping margins on 93.0 percent of Hoogovens' U.S. sales by quantity. In the absence of any information on the record that the unaffiliated purchasers in the United States will pay the ultimately assessed duties, the Department finds that respondent has absorbed antidumping duties on 93 percent of its U.S. sales.

Reimbursement

Given the circumstances of this case, the Department has continued to reconsider and refine its policy on reimbursement pursuant to the reimbursement regulation. Accordingly, on December 18, 1997, the Department issued a supplemental questionnaire addressing the reimbursement issue. We requested that parties comment on the following proposed statement of policy:

> The Department continues to presume that exporters and producers[1] do not reimburse importers for antidumping duties, absent direct evidence of such activity. However, where the Department determines in the final results of an administrative review that an exporter or producer has engaged in the practice of reimbursing the importer, the Department will presume that the company has continued to engage in such activity in subsequent reviews, absent a demonstration to the contrary. Accordingly, if the producer or exporter claims that the reimbursement situation no longer exists, such producer or exporter must satisfy the Department that (1) the importer is solely responsible for the payment of the antidumping duty, and (2) either (a) the importer was, and continues to be, financially able to pay the antidumping duties, or (b) a corporate event, such as a corporate restructuring or a capital infusion, enabled the importer to generate enough income to pay such duty. December 18, 1997 Supplemental Questionnaire.

In its response dated January 16, 1998, Hoogovens argues that a presumption on the Department's part that reimbursement will recur if there is a finding of reimbursement in the final results of an administrative review is a radical departure from the express terms of the reimbursement regulation. According to Hoogovens, the express terms of the regulation permit the Department to presume reimbursement only in those cases where the importer fails to file a certificate prior to liquidation of entries stating that it has not been reimbursed for antidumping duties. Hoogovens claims that the inclusion in section 353.26(c) of one instance in which reimbursement may be presumed would appear to exclude the Department's authority to apply other presumptions. In Hoogovens' view, to create a presumption found nowhere in the terms of the reimbursement regulation is also fundamentally inconsistent with the Department's application of the regulation, which in both this and other cases has turned on whether the factual circumstances satisfy the precise, literal language of the regulation.

Secondly, Hoogovens argues that the presumption that reimbursement will occur in subsequent reviews is inconsistent with the Department's long-standing position that "[e]ach antidumping review is a separate proceeding covering merchandise entering the United States during a specific time period, and the facts of each review are considered separately based on information submitted for that proceeding." Sulfanilic Acid from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 61 FR 53702, 53707 (October 15, 1996). Hoogovens concludes that a departure from this rule in the present case would be contrary to the Department's obligation to administer the antidumping law in a fair and impartial manner, and could create a burdensome precedent.

Hoogovens assumes that this presumption could not be permanent, and that it would reverse once the Department determined in the final results of an administrative review not to apply the reimbursement regulation. Establishing an essentially permanent presumption of reimbursement is particularly unfair, Hoogovens argues, where the burden with which the respondent is tasked involves proving the negative, that reimbursement has *not* occurred.

Hoogovens asks the Department to amend the proposed statement of policy to eliminate any presumption which fails to maintain the integrity of the section 751 administrative review process, or at least to add the following sentence to the end of the policy statement:

> Where a respondent has successfully rebutted allegations of reimbursement for the final results of an administrative review, there will no longer be a presumption of reimbursement in the subsequent review.

In their comments of January 30, 1998 on Hoogovens' January 16, 1998 response, petitioners comment that placing the burden on respondent to demonstrate that reimbursement is not recurring is appropriate, given that respondents control all of the information relevant to a reimbursement determination and the facts may be extremely difficult to uncover, especially where the parties are affiliated. Petitioners argue that because much of the documentation and information regarding the reimbursement issue has first been placed on the record in the present review, it would be inappropriate to relieve Hoogovens of its burden to show that reimbursement is not recurring, based merely on the Department's decision in the previous review. Given the difficulty of uncovering a reimbursement scheme, petitioners argue, a respondent found to have engaged in such a scheme should bear the burden in each subsequent review to show that reimbursement will not occur. At a minimum, a presumption must continue until a respondent has shown, through complete, fully verified information, that reimbursement has ceased.

Petitioners suggest, however, that it is incorrect not to apply the reimbursement regulation when a corporate event, such as a capital infusion, "enabled the importer to generate sufficient income to pay" antidumping duties. According to petitioners, such an event may in fact be the very means of reimbursing the importer. Petitioners argue that the Department's proposed policy statement is inconsistent with its stated policy of applying the reimbursement regulation where there is financial intermingling linked to reimbursement, or, in the words of the CIT, "a link between intracorporate transfers and the reimbursement of antidumping duties." *Torrington Company* v. *United States*, Consol. Court No. 95–03–00350 (CIT, October 3, 1996) at 7. Petitioners assert that even in cases where there is no specific agreement to reimburse antidumping duties, the law requires that the reimbursement regulation be applied if there is "financial intermingling" between an importer and the producer/exporter that can be linked to reimbursement. In the second administrative review, the Department committed itself to "examine [in future reviews] whether there is any inappropriate financial intermingling, to ensure that reimbursement does not recur." Cold-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Administrative Review, 62 FR at 18478 (April 15, 1997). Petitioners observe that intracorporate transfers between affiliated parties could serve to reimburse duties, regardless of whether the transfers were specifically labeled "reimbursement," and regardless of whether the transfers were made pursuant to an explicit agreement to reimburse. Further, the Department's statement of proposed policy could be read to suggest that the regulation will not be applied where the importer is able to fund its obligations by means of a capital infusion or other intracorporate transfer, regardless of whether such an infusion or transfer is specifically linked to reimbursement. Petitioners argue that this position is inconsistent with the law and incompatible with the basic purpose of the reimbursement regulation. According to petitioners,

[1] Manufacturer, producer, seller, or exporter, as set forth in 19 CFR 351.402(f)(2).

under the Department's proposed policy statement, a respondent caught reimbursing duties could continue to pay such duties without application of the regulation, simply by calling the transferred funds a "capital infusion." Petitioners conclude that this would defeat the entire purpose of the reimbursement regulation and would invite reimbursement schemes.

Petitioners propose the following changes to the Department's proposed policy statement: First, delete clause (2)(b) in the final sentence, and second, add a provision at the end of the statement to indicate that the reimbursement regulation will apply where the Department finds the requisite link between intracorporate transfers and the reimbursement of antidumping duties. Petitioners suggest the following language:

> The Department will apply the reimbursement regulation where it finds "financial intermingling"—i.e., intracorporate transfers—linked to reimbursement. In this regard, the Department will presume that reimbursement is occurring where an importer that is financially unable to pay antidumping duties receives an intracorporate transfer that enables it to pay such duties. Moreover, even where an importer is financially able to pay duties, the respondent will bear the burden to show that intracorporate transfers are not linked to reimbursement where there is a previous finding of reimbursement.

Petitioners' comments at 11 (January 30, 1998).

Department's Position: The Department has considered the comments submitted in this case and is continuing to follow the guidelines contained in the December 18, 1997, supplemental questionnaire. Based on the comments we received, we appreciate the need for further guidance. Accordingly, we may develop further guidelines in order to define more precisely such terms as corporate restructuring and the circumstances of reimbursement, as the need arises. In the present case, the facts and circumstances surrounding the corporate restructuring are clear and consistent with the purposes of the regulation. See case specific comments on reimbursement below.

Further, we disagree with Hoogovens that these guidelines violate the express terms of the regulation. Contrary to Hoogovens' claim, nothing in the regulation limits the application of a presumption exclusively to certifications under section 353.26(c) of our regulations. Further, while each review is a separate proceeding covering merchandise entering the United States during a specific time period, the establishment of a rebuttable presumption allows the Department to administer the law fairly and effectively. Based upon the final results of a previous review where the Department found reimbursement of antidumping duties, we conclude that respondent's behavior in the review or reviews following that determination requires careful scrutiny. The Department has been granted broad discretionary power to enforce the antidumping law. In the Department's view, that discretionary power is at its zenith when the fundamental purpose of the law is at stake. Reimbursement of antidumping duties relieves the importer of its obligation to pay antidumping duties and thereby undermines the remedial effect of the antidumping law and frustrates the purpose and administration of that law. Accordingly, the Department has full authority to address instances of reimbursement. See SAA at 216. The Department therefore concludes that it has proper authority to establish a rebuttable presumption where a respondent was previously found to have engaged in reimbursement activities.

Whether circumstances warrant reversing the presumption of reimbursement must be decided on a case-by-case basis. In the present case, we have determined that the continuing payment of antidumping duty cash deposits during the POR by Hoogovens warrants maintaining the rebuttable presumption of reimbursement. The prior finding of reimbursement together with the continuing payment of cash deposits is a sufficient basis for shifting the burden of proof to respondent, particularly in light of the fact that the relevant evidence is solely within the hands of the respondent.

We agree with petitioners that, under certain circumstances, the corporate event, such as a capital infusion, may be the very means of reimbursing the importer. The Department's policy is crafted to address the instances in which there has been a finding of reimbursement and the importer is financially unable to pay the duty on its own. In that circumstance, the Department will determine that the importer must continue to rely on reimbursements, such as intracorporate transfers, from the producer or exporter in order to meet its obligation to pay the duties. However, where a corporate event, such as a restructuring, has occurred, the importer must demonstrate that this event provides a continuing source of income to the importer such that the importer is able to pay the antidumping duty on its own (i.e., based upon the importer's total income). In contrast, a capital infusion that is used to pay antidumping duties directly would constitute further reimbursement of antidumping duties. In such a case, the Department will deduct the amount of the reimbursement from U.S. price in calculating the dumping margin.

Case-Specific Comments on Reimbursement

Petitioners argue that the evidence on the record demonstrates that HSUSA is being reimbursed for antidumping duties, and that the Department must apply its reimbursement regulation (19 C.F.R. § 353.26) for the final results. According to petitioners, both the courts and the Department have recognized that in cases where the importer is affiliated with the producer/exporter, the reimbursement regulation may be applied based on an agreement to reimburse or on "financial intermingling" that can be linked to reimbursement. See Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews, 61 FR at 4410–11 (February 6, 1996); *Torrington Company* v. *United States*, Court No. 95–03–00350 at 7 (October 10, 1996). This practice reflects the fact that intracorporate transfers between affiliated parties could serve effectively to reimburse duties, regardless of whether the transfers are specifically labeled as "reimbursement."

Petitioners cite the Department's determination in the second administrative review to examine in subsequent reviews "whether there is any inappropriate financial intermingling between the companies in order to ensure that reimbursement does not recur." Memorandum on Proprietary Comments on Reimbursement in Cold-Rolled Carbon Steel Flat Products from the Netherlands (April 2, 1997), at 4 in Hoogovens' June 26, 1997 Submission at Exhibit D (APO Version). According to petitioners, Hoogovens' statement that "HSUSA, as sales agent and importer of record for Hoogovens' sales, paid cash deposits on entries for sales during the period of review, using funds transferred periodically by HSBV to HSUSA for that purpose" is evidence that Hoogovens reimbursed HSUSA on all sales during the POR. Hoogovens' June 26, 1997 Submission at 1 (Public Version). Petitioners summarize the proprietary information on the record in this review in support of their contention that there was financial intermingling between Hoogovens' parent company and HSUSA, and that the corporate restructuring undertaken after the application of the

reimbursement regulation in the first administrative review was motivated by the intention to circumvent the regulation.

Petitioners argue that the Department's decision not to apply the reimbursement regulation in Certain Porcelain-on-Steel Cookware from Mexico; Final Results of Antidumping Duty Administrative Review, 62 FR 42496, 42505 (August 7, 1997) (POS Cookware) is not applicable to the facts of this case, and that to the extent that POS Cookware suggests that the regulation will only be applied where the source of funds for duty reimbursement is directly tied to the producer/exporter, it is clearly incorrect. Petitioners claim that under such reasoning, all importers, whether affiliated or unaffiliated, could receive direct reimbursement for duties without adverse consequences, provided the funds came from an affiliate of the producer/exporter, and not the producer/exporter itself. Given the fungibility of money and the numerous transactions between holding companies or parents of foreign producers and their affiliates, petitioners contend the Department could never hope to determine whether the source of funds was the producer/exporter or its affiliate.

Petitioners insist that the source of funds is irrelevant to the purpose behind the reimbursement regulation, which they claim is intended to prevent the absorption of antidumping duties by exporters, and to ensure that injured U.S. industries can fairly compete. Regardless of whether duties are reimbursed by a producer/exporter or its affiliate, according to petitioners it is clear that the duties will still be absorbed and the U.S. industry will continue to be deprived of the opportunity to compete fairly. Thus, petitioners conclude, POS Cookware provides no reason to refrain from applying the reimbursement regulation to the facts of this case.

Hoogovens argues that the Department lacks statutory authority to apply the reimbursement regulation on the basis of affiliated party transactions. Further, Hoogovens contends that there is no substantial evidence on the record of reimbursement within the meaning of the regulation. According to Hoogovens, verified evidence in this review, including the amended agency agreement between Hoogovens and HSUSA and the refund by HSUSA to Hoogovens of the amount of antidumping duties calculated by the Department in the first and second administrative reviews, clearly supports the Department's determination not to apply the reimbursement regulation in the Preliminary Results. See 62 FR at 47421 and Memorandum from Helen M. Kramer to Richard O. Weible (Decision Memorandum in 1995/96 Review), dated August 29, 1997, at 2.

Hoogovens contends that the standard announced by the Department in POS Cookware prevents application of the reimbursement regulation in this review on the grounds that Hoogovens' parent, KHNV, is neither a producer nor a reseller of scope merchandise. While HSUSA and Hoogovens share the same ultimate parent, Hoogovens argues that under the Department's interpretation of the language of the reimbursement regulation, a finding of reimbursement cannot be based on transactions between KHNV and HSUSA. Furthermore, Hoogovens argues, the Department stated in *POS Cookware* that payments from a non-producer/reseller affiliated party to a U.S. importer subsidiary that are specifically for the payment of antidumping duties do not trigger the reimbursement regulation, and this implies that payments that are not for such a purpose (as in this case) cannot trigger the reimbursement regulation. Hoogovens concludes that the Department cannot apply the regulation in either unaffiliated or affiliated party transactions unless the prerequisites of the regulatory language are met, namely that the Department expressly find reimbursement, or payment of antidumping duties by the producer or reseller on behalf of the importer. According to Hoogovens, there is no evidence of such reimbursement in this case.

Finally, Hoogovens rejects petitioners' contention that the purpose of the reimbursement regulation is to remedy duty absorption and to allow the U.S. industry "to fairly compete." Petitioners' brief at 48–49. Hoogovens points out that the reimbursement regulation says nothing about the issue of duty absorption, which is addressed in a separate provision and which may not affect the calculation of antidumping margins. SAA at 215.

Department's Position: After reviewing the proprietary information on the record in this review, the Department has determined that Hoogovens has met its burden of establishing that its affiliated importer, HSUSA, (1) is solely responsible for the payment of the antidumping duties in this review; and (2) has the financial ability to generate sufficient income to pay the antidumping duties to be assessed. See Memorandum from Helen M. Kramer to Richard O. Weible of March 9, 1998. The record shows that there is no longer an agreement to reimburse HSUSA for antidumping duties to be assessed and that HSUSA is now generating sufficient income to pay the duties. Furthermore, HSUSA has repaid Hoogovens the portion of the sums advanced for the payment of cash deposits equal to the antidumping duties to be assessed in the second review.

Further, we disagree with petitioners' position that the regulation should be invoked where a corporate restructuring was motivated by respondent's intention to circumvent the regulation. While we will be extremely vigilant in ensuring that respondent does not circumvent the regulation, it would be inappropriate to adopt a policy that requires us to divine a respondent's intent or motivation. Rather, we will examine the facts of a particular corporate restructuring to determine whether the restructuring provides a continuing source of income to the importer sufficient to cover payment of antidumping duties.

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists:

Manufacturer/exporter	Period of review	Margin (percent)
Hoogovens Staal B.V	8/1/95–7/31/96	6.08.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, the duty assessment rate will be a specific amount per metric ton. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of cold-rolled carbon steel flat products from the Netherlands entered, or withdrawn from warehouse, for consumption on or

after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate for that firm as stated above; (2) if the exporter is not a firm covered in this review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will be 19.32 percent. This is the "all others" rate from the amended final determination in the LTFV investigation. See Amended Final Determination Pursuant to CIT Decision: Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands, 61 Fed. Reg. 47871. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under section 353.26 of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period.

Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) 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 administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: March 9, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–6884 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–809]

Cut-to-Length Carbon Steel Plate From Mexico; Extension of Time Limits for Antidumping Duty Administration Review

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

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the 1996–1997 administrative review of the antidumping duty order on cut-to-length carbon steel plate from Mexico. The review covers one manufacturer/exporter of the subject merchandise to the United States, Altos Hornos de México, S.A. de C.V. (AHMSA), and the period August 1, 1996 through July 31, 1997.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: Fred Baker at (202) 482–2924, Alain Letort at (202) 482–4243, or John Kugelman at (202) 482–0649, AD/CVD Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Because it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department is extending the time limit for completion of the preliminary results until August 31, 1998. *See* Memorandum from Joseph A. Spetrini to Robert S. LaRussa, on file in Room B–099 of the Main Commerce Building. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: March 12, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 98–7010 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Extension of Time Limit for the Final Results of Antidumping Duty Administrative Reviews

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

ACTION: Notice of extension of time limit for the final results of antidumping duty administrative reviews.

SUMMARY: The Department of Commerce (the Department) is extending the time limits of the final results of the antidumping duty administrative reviews of the antidumping finding on heavy forged hand tools, finished or unfinished, with or without handles, from the People's Republic of China. The period of review is February 1, 1996 through January 31, 1997. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: Matthew Blaskovich or Wendy Frankel, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–5831/5849.

Postponement

Under the Act, the Department of Commerce (the Department) may extend the deadline for completion of an administrative review if it determines the deadline is not practicable to complete the review. The Department finds that it is not practicable to complete the above-referenced review within the statutory time limit.

In accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended, the Department will extend the time for completion of the final results of these reviews from March 12, 1998 to no later than March 27, 1998.

Dated: March 12, 1998.

Richard Moreland,

Acting Deputy Assistant Secretary, AD/CVD Enforcement Group II.

[FR Doc. 98–7011 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–820]

Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Germany: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 9, 1997, the Department of Commerce ("the Department") published the preliminary results of its 1995–96 administrative review of the antidumping duty order on Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Germany (62 FR 47446). This review covers one manufacturer/exporter of the subject merchandise, Mannesmannroehren-Werke AG ("MRW"), and Mannesmann Pipe & Steel Corporation ("MPS") (collectively "Mannesmann"), for the period January 27, 1995 through July 31, 1996.

EFFECTIVE DATE: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy Decker or Hollie Mance, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482–0196 or 482–0195, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 9, 1997, the Department published in the **Federal Register** the preliminary results of the 1995–96 review (62 FR 47446) of the antidumping duty order on Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Germany (60 FR 39704; August 3, 1995).

Under section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), the Department may extend the deadline for completion of administrative reviews if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. On December 31, 1997, the Department extended the time limits for the final results in this case. See Extension of Time Limit for Antidumping Duty Administrative Reviews (62 FR 68258). The Department has now completed this administrative review in accordance with section 751 of the Act.

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 by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR Part 353 (April 1, 1997).

Scope of the Order

The scope of this review includes small diameter seamless carbon and alloy standard, line and pressure pipes ("seamless pipes") produced to the American Society for Testing and Materials ("ASTM") standards A–335, A–106, A–53, and American Petroleum Institute ("API") standard API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this review also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification.

For purposes of this review, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot-finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe, or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non-standard wall thicknesses are commonly referred to as tubes.

The seamless pipes subject to this review are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States ("HTSUS").

The following information further defines the scope of this review, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas, and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM standard A–106 may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers ("ASME") code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent ASTM A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple-certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple-certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines

and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this review includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non-covered specification. Standard, line and pressure applications and the above-listed specifications are defining characteristics of the scope of this review. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–335, ASTM A–106, ASTM A–53, or API 5L standards shall be covered if used in a standard, line or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this review.

Specifically excluded from this review are boiler tubing and mechanical tubing, if such products are not produced to ASTM A–335, ASTM A–106, ASTM A–53 or API 5L specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished oil country tubular goods ("OCTG") are excluded from the scope of this review, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Finally, also excluded from this review are redraw hollows for cold-drawing when used in the production of cold-drawn pipe or tube.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Fair Value Comparisons

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States,* 1998 U.S. App. LEXIS 163. In that case, based on the pre-URAA version of the Act, the Court ruled that the Department may not resort immediately to constructed value ("CV") as the basis for foreign market value (now normal value, or "NV") when the Department finds home market sales of the identical or most similar merchandise to be outside the "ordinary course of trade." This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ordinary course of trade to include sales below cost. *See* Section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV as the basis for NV where the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ordinary course of trade. Instead, the Department will use other sales of similar merchandise to compare to the U.S. sales if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Accordingly, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all home market sales of the foreign like product that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire. Thus, we have implemented the Court's decision in CEMEX to the extent that the data on the record permitted.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results of review. The Department received briefs and rebuttal briefs from petitioner, Gulf States Tube Division of Quanex Corporation, and the respondent in this case, Mannesmann. At the request of petitioner, we held a hearing on November 6, 1997. Based on our analysis of the issues discussed in these briefs, we have changed these final results of review from those published in our preliminary results.

Comment 1

Mannesmann maintains that the Department improperly invoked the special rule for major inputs in section 773(f)(3) of the Act when it ignored Mannesmann's verified billet costs in calculating the company's cost of production ("COP"). Mannesmann objects to the Department's revaluation of major inputs based on one purchase of billets from an unaffiliated supplier. According to Mannesmann, the Department should have treated the production of billets by Hüttenwerke Krupp Mannesmann GmbH ("HKM"), an affiliate, as integrated with Mannesmann's production of seamless pipe. At the hearing as well as at verification, Mannesmann asserted that HKM is not, in fact, an affiliate in the traditional sense of the word, but that it is run as a cost center. Mannesmann points out that the Department conducted a separate verification of HKM, and that the Department confirmed that HKM sold billets to two MRW plants, Mannesmannrohr ("MWR") and Mannesmannröhren-Werke Sachsen GmbH ("MWS"), at cost, and that the affiliate had reported accurate and complete cost data.

Mannesmann contends that the Department has no legal basis for disregarding reported costs and instead applying the major input rule. Mannesmann argues that this provision has no relevance when the Department has verified COP data. Mannesmann argues that the Court of International Trade ("CIT") has held that, when costs of production have been provided, "this part of the statute is inapplicable" (*SKF USA Inc. and SKF GmbH* v. *United States*, 888 F. Supp. 152, 156 (CIT 1995)). Mannesmann argues that costs are merely being passed along, and that HKM operates as though it were a division of Mannesmann. Therefore, according to Mannesmann, section 773(f)(3) of the Act does not apply. Mannesmann maintains that the purpose of the major input provision is to allow the Department to use the "the best available evidence as to * * * costs of production if the Department has reasonable grounds to believe or suspect that the transfer price of an input is less than the cost of producing it." In this instance, Mannesmann holds that the rule has no application if the best available evidence as to the cost of producing the billets is the verified actual cost of the affiliate. Mannesmann states that sections 773(f)(2) and (3) provide that the Department may only disregard "transfer price" transactions if, based on the information considered, the transfer prices do not reflect a fair price. Mannesmann notes that the CIT has stated that this provision permits Commerce "to use best evidence available when it has reasonable grounds to suspect below cost sales" of a major input have occurred (*NSK Ltd.* v. *United States*, 910 F. Supp. 663, 670 (CIT 1995)). Mannesmann further notes

that the CIT upheld the Department's application of the major input rule in NSK because NSK failed to provide COP data, and that had NSK provided cost data, that data would have been the best evidence available.

According to Mannesmann, the Department had no reasonable basis for applying an across-the-board percentage price increase on all billets based on one exceptional purchase of a steel grade that was not sold in the United States and would not, in any event, be utilized in the calculation of NV.

Moreover, Mannesmann states that its representatives explained at verification that MWR and MWS only purchased from unaffiliated suppliers on occasions when the related party did not produce a specific grade or purity of steel or when a small volume was ordered. Mannesmann claims it must go to unaffiliated parties in these instances and purchase it at a higher price. Therefore, Mannesmann claims that no adjustment to billet costs is warranted. However, if the Department makes any adjustments for billet costs, Mannesmann asserts that the adjustment should be less punitive. Mannesmann maintains that such an adjustment could only be applied to the relevant steel grade billet, conforming to SPEC2H 61 and 62, that was sold to Mannesmann by both affiliated and unaffiliated suppliers. At the hearing, Mannesmann also proposed a third alternative which it claimed was the most adverse methodology that could reasonably be applied to this situation. Mannesmann suggested applying the same adjustment made in the preliminary results to the billets purchased from unaffiliated parties.

Petitioner argues that the statute plainly allows the Department to disregard transactions between affiliated parties (1) for any element of cost for which the transaction price between the parties "does not fairly reflect" the normal market prices under section 773(f)(2) and (2) where it has reasonable grounds to believe or suspect that a "major input" has been provided at less than the COP under section 773(f)(3).

Petitioner states that Mannesmann's citations to NSK and SKF are misplaced. According to petitioner, NSK dealt with the question of whether the Department could require a respondent to provide cost information, not for the proposition that the Department must rely on cost information to the exclusion of market value information (see NSK, 910 F. Supp. at 669). Petitioner states that in SKF, the court merely upheld the Department's discretion to apply the COP of the major input and, contrary to Mannesmann's characterization, did not find that the Department must apply the COP rather than the transfer price or market value.

Further, petitioner states that the Department's calculation of market value was supported by substantial evidence on the record and supported by law. According to petitioner's reasoning, the Department sought information "as to what the amount would have been if the transaction had occurred between parties who were not affiliated." Further, the only information on the record available to the Department about what the market value would have been if bought from an unaffiliated producer was a single purchase of billets. This price difference was used as an adjustment factor for the billets purchased from the affiliated producer in the preliminary results. Petitioner states that the Department has discretionary authority to determine the best evidence available as to market value in a manner that is not inconsistent with the statute, citing *Chevron USA, Inc.* v. *Natural Resources Defense Counsil*, 467 U.S. 837, 842–43 (1984). Petitioner also cites Daewoo Elec. Co. v. *Int'l Union of Elec., Technical, Salaried and Mach. Workers*, 6 F.3d 1511, 1516 (Fed. Cir. 1993), which petitioner claims indicates that considerable weight is accorded to the Department's construction of the statute. According to petitioner, Commerce's choice of methodology will be upheld absent a showing by Mannesmann that the methodology was unreasonable. Petitioner claims that nothing in the record indicates that the chosen methodology was unreasonable.

Petitioner refutes each of Mannesmann's three arguments as to why the choice of methodology was unreasonable. First, petitioner states that to base the adjustment upon a small volume purchase was, in fact, appropriate. Petitioner asserts that the Department is directed by the statute to use the "information available" to determine market value and that the information chosen was the only information available. Petitioner concludes that there are no more favorable or detrimental options available to the Department.

Second, petitioner contends that the fact that the grade used to calculate the adjustment factor was not sold in the U.S. does not invalidate the Department's chosen methodology. Petitioner asserts that there is no evidence on the record to suggest that another quantity would have not also shown a similar price differential.

Third, petitioner argues that, even though actual cost data has been provided, that is irrelevant to a determination of what an arm's-length market price from an unaffiliated supplier would be. Petitioner cites section 773(f)(2), which they claim requires a determination of the market value in addition to the COP. Furthermore, petitioner states that the major input rule in section 773(f)(3) allows the Department to use the producer's actual cost only where "such cost is greater than the amount that would be determined for such input under paragraph (2)," which is the market value.

Petitioner concludes that the Department should continue to value billets purchased from its affiliate at the highest of COP, transfer price, or market value. Petitioner states that the Department's use of market value, when it was higher than cost, was consistent with the statutory directive.

Department's Position

The Department agrees with petitioner and maintains its position as stated in the preliminary determination. We disagree with Mannesmann's assertion that the Department improperly invoked the special rule for major inputs. Sections 773(f)(2) and (3) of the Act specify the treatment of transactions between affiliated parties for purposes of reporting cost data (for use in determining both COP and CV) to the Department. Section 773(f)(2) indicates that the Department may disregard such transactions if the amount representing that element (the transfer price) does not fairly reflect the amount usually reflected (typically the market price) in the market under consideration (where the production takes place). Under these circumstances, the Department may rely on the market price to value inputs purchased from affiliated parties.

Section 773(f)(3) indicates that, if transactions between affiliated parties involve a major input, then the Department may value the major input based on the COP if the cost is greater than the amount (higher of transfer price or market price) that would be determined under 773(f)(2). Section 773(f)(3) applies if the Department "has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the COP of such input." The Department generally finds that such "reasonable grounds" exist where it has initiated a COP investigation of the subject merchandise.

Because a COP investigation was conducted in this case, the Department requested in its Supplemental Section D questionnaire that Mannesmann provide COP information for the billet rounds.

That cost information was provided by the affiliated party and was verified. In accordance with sections 773(f)(2) and (3), we used the highest of transfer price, COP or market value to value the billets.

The Department disagrees with Mannesmann's claim that it had no reasonable basis to apply an across-the-board percentage price increase on all billets based upon one exceptional purchase of a steel grade that was not sold in the United States. Market price information was requested in the Section D questionnaire for any purchases of the identical input from unaffiliated suppliers, but Mannesmann did not respond to this portion of the questionnaire. In the second Supplemental D questionnaire response at question 4, Mannesmann made a specific claim regarding purchases of inputs from affiliated and unaffiliated parties. (See proprietary Final Analysis Memo; March 9, 1998) At verification the Department attempted to verify this claim by examining Mannesmann's purchases of billets in one sample month. We discovered one such purchase in this month, and utilized this purchase price as market value. (See Cost Verification Report at V:5.B.3) Further, as there is no other information on the record, we have used this information as facts available to determine market values for other types of billets.

Section 776(a)(2) of the Act provides that "if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including information drawn from the petition.

The use of adverse facts available is appropriate. Therefore, for the final results, as adverse facts available, we have continued to apply this market value adjustment to all purchases from affiliated suppliers.

Comment 2

Mannesmann states that the Department improperly rejected its claim for a startup adjustment pursuant to section 773(f)(1)(c) of the Act in its preliminary results in spite of the fact that it met the statutory requirement for this adjustment. Mannesmann states that it substantially retooled the push bench operations at Zeithain, and that production levels were substantially limited by technical factors associated with the initial phase of commercial production. According to Mannesmann, when the statutory criteria are fulfilled, the Department must make a startup adjustment. Mannesmann cites Notice of Preliminary Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 62 FR 51442, 51447–48 (Oct. 1, 1997), as a case in which the startup adjustment was preliminarily granted when the "threshold criteria" of the statute were met.

The Department's denial, in Mannesmann's view, is not supported by the record and the Department's Preliminary Analysis Memorandum of September 2, 1997 indicates that the Department misunderstood the evidence Mannesmann submitted to support its claim.

According to Mannesmann, the Department incorrectly equated the push bench machine with the push bench operation. Mannesmann states that the push bench operations encompass much more than one machine as implied by the Department. Mannesmann states that the Department's Cost Verification Report documents and describes the substantial investments made by Mannesmann in retooling and replacing the push bench operation at Zeithain (see Cost Verification Exhibit Z–4).

In addition, Mannesmann contends that it documented and the Department verified that a substantial percentage of the total fixed assets at the Zeithain mill consisted of push bench operations. See Supplemental Section D Response at 12, and Exhibit D–6; Cost Verification Exhibit Z–25.

Mannesmann claims that record evidence clearly documents the reduced productivity of the push bench operations during the startup period. In Mannesmann's opinion, the Department's conclusion that production and manufacturing activity levels were substantially the same during 1995 and the claimed startup period in 1996 is erroneous. According to Mannesmann, the machine operating time shown in Exhibit 5 of the Department's Cost Verification Report is not a measure of actual operating time and, therefore, does not provide an accurate factual basis of productivity. Instead, Mannesmann states that the Department must evaluate the efficiency of the plant measured in output over a given time period in order to gauge accurately the impact of retooling the push bench operations. Mannesmann points out that the Efficiency Comparison Table provided at the Zeithain cost verification documents the clear drop in productivity during the first seven months of 1996, compared to production in 1995. See Cost Verification Exhibit Z–25. Mannesmann refers to a graph which they included in their brief as an illustration of the substantial lower production efficiency of the push bench operations during the startup period when new and retooled equipment was being brought on line.

Moreover, Mannesmann points out that it has met the requirement that a company is entitled to a startup adjustment if it properly identifies the technical problems encountered during startup that resulted in reduced productivity. See Statement of Administrative Action ("SAA") accompanying the URAA, H.R. Rep. No. 103–316 (1994) at 168 (838).

Mannesmann concludes that the investment at the Zeithain mill has been substantial, and the startup problems well-documented. Accordingly, Mannesmann believes that the Department must grant it the requested adjustment in the final results of this review.

Petitioner counters that Mannesmann's investment amounts to a much smaller portion of total assets for the period of review ("POR") than it claims. Petitioner maintains that section 773(f)(1)(c)(ii)(I) makes clear that a substantial investment is not enough to trigger the adjustment; the substantial adjustment must result in a new production facility. According to petitioner, there is no evidence to indicate how much of the additional expenditures were part of ongoing improvements to the existing facility.

Petitioner also rejects Mannesmann's reliance on productivity in terms of tons per hour as a measure of limited production levels rather than reliance on total volume of production as stated in section 773(f)(1)(c)(ii) of the Act: "the administering authority shall consider factors unrelated to startup operations that might affect the volume of

production processed * * *" Petitioner maintains that the statute and the regulations are concerned with reaching commercial production levels and, in petitioner's view, Mannesmann had operated at commercial production levels.

Petitioner agrees with the Department's finding that the record does not show that production and manufacturing activity were significantly different during the alleged startup period and the same period in the previous year. Therefore, the Department should continue to deny Mannesmann's requested startup adjustments for these final results.

Department's Position

The Department agrees with petitioner that Mannesmann did not adequately demonstrate its eligibility for a startup adjustment. Under section 773(f)(1)(C)(ii) of the Act, Commerce may make an adjustment for startup costs only if the following two conditions are satisfied: (1) A company is using new production facilities or producing a new product that requires substantial additional investment, and (2) production levels are limited by technical factors associated with the initial phase of commercial production. Here, neither prong of the test has been satisfied.

Mannesmann did not construct new production facilities or produce a new product. This case is thus unlike Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 17148, 17162 (April 9, 1997) or Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8930 (February 23, 1998), in which respondents constructed entirely new facilities. Mannesmann could not demonstrate the "substantially complete retooling of an existing plant," as required in the SAA at 166(836). The SAA states that "substantially complete retooling involves the replacement or equivalent rebuilding of nearly all production machinery." In Notice of Final Determination of Sales at Not Less Than Fair Value: Collated Roofing Nails From Korea, 62 FR 51420, 51425 (October 1, 1997), the Department denied a startup adjustment where the "substantially complete retooling" requirement was not met. Because the respondent "merely relocated its production facility without replacing or rebuilding nearly all of its machinery, and the record evidence does not show that the relocation involved a substantial investment in connection with the revamping or redesigning of collated roofing nails, the first condition for the startup adjustment is not satisfied." Similarly, record evidence of the fixed asset expenditures in this case does not demonstrate that the 1996 push-bench replacement represented a "substantially complete retooling." The level of its investment which was reviewed by the Department, while substantial, does not reach the level where it could be classified as a complete retooling of the plant. Further, the Department has viewed the push-bench during the plant tour and has reviewed the plant layouts which were submitted in the Supplemental Section D questionnaire response to gain further understanding of the push-bench operation. While Mannesmann did work on a number of machines within the push-bench operation, in many cases, Mannesmann only replaced or rebuilt part of the machine (see page 19 of the Sales Verification Report). This did not result in the replacement or equivalent rebuilding of nearly all production machinery, and coupled with the level of investment, leads us to conclude that Mannesmann does not meet the criteria for new production facilities.

As stated in Collated Roofing Nails From Korea, 62 FR at 51426, "because [respondent] does not meet the requirements outlined in the first prong of the start-up provision, the Department is not required to address whether or not [respondent's] production levels were limited by technical factors associated with the initial phase of commercial production". The Department did, however, review evidence on the record whereby Mannesmann attempted to demonstrate that production levels at the Zeithain mill were substantially limited by technical factors during the startup period. The Department has fully reviewed the productivity, machine operating time, and efficiency data presented by Mannesmann in responses and at verification for all of 1995 and 1996. While productivity and efficiency decreased from 1995 to 1996 as shown in Cost Verification Exhibit Z–25, this decline was not substantial enough to indicate that Mannesmann was unable to produce in commercial quantities. Further, the decline in productivity occurred throughout the year and not only during the alleged startup period. Thus, we could not correlate the demonstrated decline in productivity with the installation of the push-bench operation. Therefore, due to the fact that neither the substantial retooling nor the reduced productivity requirements has been adequately supported, we have disallowed the startup adjustment.

Comment 3

Mannesmann claims that it has provided evidence on the record to support its claimed offset to financial expenses from short-term interest income. It states that the Preliminary Analysis Memorandum indicates that the Department wrongly denied the offset because it presumed that Mannesmann's reported financial income was from long-term investment. According to Mannesmann, this presumption is inaccurate.

According to Mannesmann, its consolidated financial statements and annual reports show that income from long-term loans and investments is separately listed and distinguished from short-term interest and investments. Mannesmann states that the amount of income earned from working capital is, by definition, related to manufacturing and sales operations, and cites a case in which this methodology was accepted (Notice of Final Results of Antidumping Duty Administrative Reviews: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, *et al.*, 60 FR 10900, 10925 (Feb. 28, 1995)). Mannesmann states that its financial statements were verified for accuracy and completeness, and that the data reported in those financial statements should be used to calculate a short-term interest income offset in the reported financial expense.

Further, Mannesmann states that the CIT has held that short-term interest does not need to be exclusively related to the merchandise subject to review in order to qualify as an offset to interest expense (*Timken Co.* v. *United States*, 852 F. Supp. 1040, 1047–48 (CIT 1994)). Accordingly, Mannesmann concludes that the Department must allow the short-term interest income offset in the calculation of financial expense because it was derived from its verified financial statements, and it is related to the ordinary course of business.

Petitioner states that the Department properly denied the interest income offset in computing financial expense. Petitioner asserts that, because Mannesmann did not provide a requested schedule to support its claim that the interest income was, in fact, short-term in nature, the offset should be denied. It is petitioner's contention that, because the account title "other interest and similar income" does not describe the long or short-term nature of the account amount, that one cannot conclude that it is short-term in nature. Thus, petitioner urges the Department to

continue to deny the interest income offset in its final results.

Department's Position

We agree with Mannesmann. For these final results, the Department has allowed the short-term interest income offset which Mannesmann claimed in its calculation of financial expense. Although a schedule which specifically supported this amount was not provided at verification, we have concluded through further review of the financial statements that the income is short-term in nature. Interest income appears in two line items in the disclosure of interest income and expense. One of the line items indicates that it is long-term in nature, and the other line item, which has a general description that does not specifically indicate that it is short-term, can reasonably be assumed to be short-term interest income.

We agree that the financial statements were verified and have been audited, thus providing a reliable basis for interest expense calculation. Further, we agree that the short-term interest income does not need to be exclusively related to the merchandise subject to review in order to qualify as an offset to interest expense.

Comment 4

Mannesmann objects to the Department's application of the highest duty reported to all U.S. sales as adverse facts available, when there were only minor differences between the U.S. duty reported and the verified amounts. At verification the Department examined the duty paid on more than half of total U.S. sales and found only minor discrepancies which, according to Mannesmann, were the result of allocation and rounding methodologies.

Given that the Department verified the reliability and accuracy of MPS' accounting system and record keeping (see U.S. Sales Verification Report at 14–16), Mannesmann believes the Department should use the duty data reported by Mannesmann for its final results. However, if the Department chooses to adjust the reported duty amounts, Mannesmann suggests that the Department add to the reported duty for all sales the weighted average or difference between what was reported and what was verified. Mannesmann believes this approach would result in a "fair comparison," the basic purpose of the URAA. According to Mannesmann, the punitive approach of adverse facts available is unwarranted.

Mannesmann contends that the use of adverse facts available under these circumstances is contrary to the purposes of the Act, the SAA and established principles of dumping law. According to Mannesmann, the Department's apparent rationale for choosing a punitive margin rate was that certain sales trace documents in the home market were not photocopied and provided promptly enough. Mannesmann reiterates that they were subject to four and a half weeks of verification at different locations, during which time the Department had every opportunity to check the accuracy and completeness of the data submitted by the Mannesmann companies. It is their contention that the Department simply has no grounds to allege that Mannesmann has in any way been "uncooperative." According to Mannesmann, the assertion that Mannesmann has been uncooperative in any aspect of the administrative review is contradicted by the factual record. Mannesmann argues that the initial threshold for applying facts available, let alone adverse facts available, is high. The Department is only authorized to use adverse inferences in extreme situations, such as when it finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, in Mannesmann's view. Mannesmann states that it did not engage in any activity during the course of this administrative review that could even remotely be characterized as uncooperative behavior deserving of adverse inferences. Further, they claim that they have fully complied with the Department's requests for information and they state that there is ample information on the record that allows the Department to use more accurate evidence as "facts available" than to apply facts available based on adverse inferences. Mannesmann asserts that the Department is under a legal obligation to use the most accurate information available to make "fair comparisons" and obtain an accurate dumping margin. Mannesmann concludes that the Department should base its calculations for the final results on the factual evidence available in the records of this review.

Petitioner argues that the application of facts available in this case is justified because Mannesmann was unable to verify the correctness of the reported duty amounts and did not have the information to provide corrections to many of the sales. In addition, petitioner maintains that correcting each of Mannesmann's sales listings to account for these errors would have caused undue difficulty to the Department.

Concerning Mannesmann's complaint that the application of the highest duty constitutes adverse facts available out of proportion with the discrepancies found, petitioner states that the choice of the facts available is discretionary, and that both the Department's old and new regulations permit the use of other information submitted by the respondent as facts available. See 19 CFR 353.37(b) and 19 CFR 351.308(c) (62 FR 27296; May 19, 1997). Petitioner argues that the use of adverse facts available is thus warranted in this case.

Department's Position

We agree in part with both Mannesmann and petitioner. In this case, Mannesmann incorrectly reported U.S. duty for the majority of the U.S. sales examined at verification (see U.S. Sales Verification Report at 21). In determining whether U.S. duty was properly reported, we summed total U.S. duty paid on the entry we were examining and compared it to total U.S. duty reported in the applicable observations. For several of the entries (comprising numerous sales observations), we found that the total U.S. duty across the associated observations was underreported. This indicates that errors exist which are more pervasive than can be explained by rounding or allocation methodologies. In addition, the company could not recreate or explain the allocation methodologies used in its submission.

For the sales for which we were able to verify that duty was correctly reported, we are using the reported duty amounts for these final results. For all other sales, we have applied as adverse facts available one of two duty rates, depending upon product classification. We applied the highest reported duty amount for carbon products to all sales of carbon products, and we applied the highest reported U.S. duty amount for alloy products to all sales of alloy products (see Final Analysis Memorandum of March 9, 1998). While the Department has broad discretion on the use of facts available (see Silicomanganese from Brazil: Final Results of Antidumping Duty Administrative Review, 62 FR 37869, 37874 (July 15, 1997) and *Allied Signal Aerospace Co.* v. *United States*, 996 F.2d 1185, 1191 (Fed. Cir. 1993)), we determined that it was appropriate to consider the differences in value and duty rates for the two classes of products in our choice of facts available.

By not providing verifiable information for U.S. duties when such information was available to Mannesmann, we have determined that Mannesmann failed to cooperate by not acting to the best of its ability to comply

with a request for information. Therefore, the use of adverse facts available is appropriate (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, 61739 (Final, Nov. 19, 1997)).

Comment 5

Mannesmann maintains that the adverse assumptions made by the Department about its U.S. sales data are not justified. Mannesmann states that in its attempt to accurately reflect its normal business practices in reporting U.S. sales data, it was necessary to allocate certain movement expenses between subject and nonsubject merchandise. Moreover, Mannesmann notes that it reported the actual inland freight it was charged by its German affiliate, MH. These costs, however, often differed slightly from the actual costs MH paid to outside unaffiliated suppliers for services. As a result, slight discrepancies occurred between the U.S. freight data submitted and the expenses reviewed at verification.

Mannesmann also objects to the Department's use of the highest reported amounts for foreign inland freight as partial facts available. Although Mannesmann reported the amounts it is charged and actually pays its affiliate for transportation, at verification the Department was unable to tie these amounts to third-party payments by MH because Mannesmann does not receive these third-party invoices, but simply pays MH based on MH's allocation of freight charges.

Mannesmann argues the Department should use the amounts reported or, alternatively, a freight amount that reflects the amounts verified at Mannesmann, such as the higher of the reported amount or the average of all foreign inland freight reported for each mill. In any case, Mannesmann holds that the Department should not make a freight amount adjustment where it is reported as zero. Further, Mannesmann states that the use of adverse facts available is not appropriate.

Petitioner points out that this same inability to provide the required information occurred in the original investigation and prompted the Department to apply best information available ("BIA") (see Notice of Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Germany, 60 FR 31980 (June 19, 1995)) ("German seamless pipe LTFV final"). In petitioner's view, in the instant case Mannesmann's failure even to attempt to provide payment records for sample sales at verification constitutes a failure to cooperate with the Department and justifies the use of adverse facts available.

Department's Position

We agree with petitioner. By not providing verifiable information for inland freight, including actual payment records, when such information was available to Mannesmann, we have determined that Mannesmann failed to cooperate by not acting to the best of its ability to comply with a request for information.

Mannesmann reported foreign inland freight in two fields: (1) Plant to border and (2) border to port. We examined one sale in which one of these fields was zero. The freight reported in the other field was explained to include all freight from plant to port, but it was incorrectly reported. Therefore, since the freight amounts reported were inaccurate or could not be supported, we are continuing to apply facts available. However, in these final results, we are using the highest reported inland freight amount in each freight field by mill. We realize that the mills are located hundreds of miles apart, and therefore, there could very likely be differences in the cost of freight from plant to port between the two plants. We were able to verify production by mill, and the mill source reported for each sale.

Comment 6

Mannesmann maintains that the Department should not deduct indirect selling expenses (DINDIRSU and RINDIRSU) (*i.e.*, amounts related to selling expenses incurred in the country of manufacture) from export price ("EP")/constructed export price ("CEP") because these fields do not contain expenses "which result from, and bear a direct relationship to, selling activities in the United States." See SAA at 153 (823). Mannesmann cites Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 17148, 171167 (April 9, 1997); Roller Chain, Other Than Bicycle, From Japan: Final Results of Antidumping Duty Administrative Review, 61 FR 64322, 64326 (December 4, 1996); and Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy, 61 FR 30326, 30352 (June 14, 1996). Mannesmann concludes that the Department should correct its final calculations to conform with the statute and the clear dictates of the SAA and not subtract these two fields from the U.S. price.

Petitioner holds that Mannesmann's claim that the selling expense must be incurred in the U.S. market in order to be deducted from CEP is not supported by the statute. According to petitioner, the phrase "in the United States" is a reference to the location of the affiliated seller and not an attempt to limit the deduction to selling expenses incurred in the United States. If such a limitation were intended, petitioner states that the phrase "in the United States" would have occurred immediately after the phrase "generally incurred" in section 772(d)(1) of the Act.

Department's Position

We agree in part with both Mannesmann and petitioners. The indirect selling expenses incurred in Germany (RINDIRSU and DINDIRSU) are associated both with sales of the merchandise from the producer/exporter to the affiliated importer in the United States and with sales from the affiliated importer to unaffiliated customers. See German Sales Verification Report at 11–12, U.S. Sales Verification Report at Exhibit 11, and Mannesmann's Section A Questionnaire Response at 24. As we explained in Gray Portland Cement and Clinker From Mexico, 62 FR at 17167–68, we do not believe that section 772(d) of the Act requires us to deduct selling expenses not associated with economic activities occurring in the United States. See SAA at 153 (823). Accordingly, we do not treat expenses associated with the sale of the merchandise from the producer/exporter to the affiliated importer as U.S. selling expenses.

Applying this practice here, we have deducted RINDIRSU (associated with MRW's selling activities), but not DINDIRSU (associated with MH's selling activities), from Mannesmann's CEP. We noted at verification that MRW worked directly with unaffiliated U.S. customers in the development of certain specifications. While MRW also incurred selling expenses associated with sales to MPS, the affiliated U.S. importer, the record nevertheless supports the deduction of RINDIRSU from CEP given MRW's involvement with unaffiliated U.S. customers. See U.S. Sales Verification Exhibit 20. MH's selling expenses, however, mainly relate to transactions between MRW and MPS. For these reasons, we believe that it is reasonable to deduct RINDIRSU, but not DINDIRSU, as indirect selling expenses.

Comment 7

Mannesmann claims that the Department, in calculating the margin for the preliminary results, assumed all products designated as low temperature

in MPS' list were subject merchandise and incorrectly treated A–333 pipe used in low temperature applications as covered products. Mannesmann states that at verification it provided the Department with a printout of all sales in the three MPS material classes that could possibly contain subject merchandise and noted why some sales were not on the sales database. The Department spot-checked unreported merchandise on the list and, according to Mannesmann, asked no further questions. See U.S. Sales Verification Exhibits 15 and 16.

Mannesmann maintains that since A–333 is a specialized low temperature pipe and more expensive than pipe used in standard, line and pressure pipe applications, it would make no economic sense for a customer to order the specialized low temperature pipe for a less exacting specification. Mannesmann also notes that A–333 pipe is not tested to perform at all levels of service required of A–106 pipe, and would not customarily be substituted for A–106 applications. According to Mannesmann, the Department erroneously assumed all products designated as low temperature in MPS' list were subject merchandise. Mannesmann explains that A–333 pipe is only covered by the scope of the antidumping duty order if such pipe is used in standard, line or pressure pipe applications. Mannesmann emphasizes that all A–333 invoices reviewed by the Department during verification confirmed that MPS' sales of A–333 pipe were for low temperature applications only.

Mannesmann claims that the Department did not question nor voice dissatisfaction with its spot-check of the invoices at verification. In Mannesmann's view, the Department was obligated to provide it with some notice at verification that the company's explanations did not satisfy the Department.

Mannesmann states that the confusion concerning whether A–333 pipe is covered by the antidumping order illustrates the difficulties inherent in having end-use as a scope criterion. See Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube from Brazil, the Republic of Korea, Mexico and Venezuela, 61 FR 11608 (March 21, 1996). Mannesmann also claims that the Department decided in the original investigation that no end-use certification would be required "until such time as petitioner or other interested parties provide a reasonable basis to believe or suspect that substitution is occurring" and that certifications would only be required for those products "for which evidence is provided that substitution is occurring." See German seamless pipe LTFV final at 31975–6. Mannesmann argues that the Department cannot assume that normally non-subject merchandise has been utilized for standard, line, or pressure pipe purposes without some evidence on the record to support such an assumption. Indeed, according to Mannesmann all available evidence on the record is to the contrary and the Department cannot as a matter of law include sales of non-subject A–333 merchandise in its margin calculation.

Moreover, Mannesmann objects to the Department's application of the margin rate from the initial investigation to sales of low temperature merchandise. Mannesmann claims that section 776(c) of the Act requires the Department to corroborate any secondary information used as facts available from independent sources reasonably at its disposal. Mannesmann states that the SAA makes clear that the Department "will satisfy [itself] that the secondary information to be used has probative value." See SAA at 200 (870). Mannesmann notes that it submitted information in the original investigation explaining why the margin calculated in the petition and chosen by the Department as BIA should not have been used. Mannesmann argues that petitioner's calculations cannot be corroborated as required by the Act, and applying the margin from the petition would be directly contrary to the URAA. According to Mannesmann, in Fresh Cut Flowers From Mexico; Preliminary Results of Antidumping Duty Administrative Review, 60 FR 49567, 49568 (September 26, 1995), the Department rejected the highest rate from the previous review as BIA because it was not representative.

Mannesmann argues that the Department should not use adverse facts available to calculate a margin on non-subject A–333 low-temperature products. Mannesmann claims that it fully cooperated with the Department and the standard for applying adverse facts available is high. See Circular Welded Non-Alloy Steel Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 37014, 37019–20 (July 10, 1997); Porcelain-on-Steel Cooking Ware from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 62 FR 32757, 32 758 (June 17, 1997).

Petitioner argues that the Department properly applied facts available to A–333 pipe that Mannesmann did not report in its U.S. sales listing. Petitioner notes that Mannesmann unilaterally determined that these sales were not within the scope of the order and the Department did not learn about such sales until verification.

Petitioner notes that the scope of the order specifically includes A–333 pipe when "such pipes are used in a standard, line or pressure pipe application." In petitioner's view, Mannesmann did not provide the Department with any information on the use of A–333 products at verification and the Department was unable to verify that these products were not used in covered applications. Petitioner claims that Mannesmann should have raised any doubts about the scope of the order and its reporting requirements, as it is the Department who determines what information is to be provided in a dumping review, not the respondent. See *Ansaldo Componenti, S.p.A.* v. *United States,* 628 F.Supp. 198, 205 (CIT 1992). According to petitioner, respondents cannot be allowed to make unilateral decisions about the information to be provided when ambiguity exists. In *Persico Pizzamiglio, S.A.* v. *United States,* 18 CIT 299, 303–304 (1994), petitioner points out that the CIT held that application of BIA was appropriate because the responding party had a duty to resolve the issue with the Department prior to submitting its response.

Petitioner states that the cost differential between A–333 and A–106 pipe would make substitution possible. Petitioner rejects Mannesmann's contention that Exhibit 28 provides an indication that the material was used for low-temperature service outside the scope of the order. Petitioner contends that invoices merely show the product was tested to meet low-temperature uses, but do not establish that the pipe was actually used in that way. Petitioner states that Mannesmann was obligated to fully report all sales of subject merchandise; it is not incumbent on the Department to prove that Mannesmann's A–333 sales were used for covered applications. Petitioner argues that, due to Mannesmann's lack of adequate preparation for verification, Mannesmann cannot reasonably expect the Department to have spent additional time chasing down information on A–333 sales—information that Mannesmann was obligated to provide in its questionnaire response.

Concerning Mannesmann's complaint that the Department cannot use the rate from the petition as the facts available margin because the rate cannot be corroborated, petitioner maintains that section 776 of the Act requires corroboration of the information only "to the extent practicable." Moreover,

the SAA at 200 (870) specifically provides that "the fact that corroboration may not be practicable in a given circumstance, will not prevent the Department from applying adverse inferences." Petitioner points out that since Mannesmann's responses were unusable for purposes of the final determination (see German seamless pipe LTFV final at 31978), they are equally unusable for purposes of corroborating the final results of this review. Petitioner argues that the use of adverse facts available is appropriate due to Mannesmann's unilateral decisions about what information to provide to the Department.

Department's Position

We agree with Mannesmann. While it is true that the scope of this order specifically includes A–333 pipe when such pipes "are used in a standard, line or pressure pipe application," the Department decided in the original investigation that no end-use certification would be required "until such time as petitioner or other interested parties provide a reasonable basis to believe or suspect that substitution is occurring" and that certifications would only be required for those products "for which evidence is provided that substitution is occurring." See German seamless pipe LTFV final at 31975–6. Petitioner has not provided the Department with any information which provides us a reasonable basis to believe or suspect that A–333 pipe is being used for standard, line or pressure applications in the context of this review. In the absence of such information, we are considering Mannesmann's U.S. sales of A–333 pipe to be non-subject merchandise for these final results.

Comment 8

Mannesmann asserts that if there is a difference between the actual functions performed by sellers at the different levels of trade in the two markets and the difference affects price comparability, the Department is required to make a level of trade ("LOT") adjustment pursuant to section 773(a)(7)(A) of the Act.

Mannesmann maintains that during the POR it made sales in the home market at two distinct levels of trade, to end-users and to distributors. According to Mannesmann, the Department examined in detail documents demonstrating that products sold to end-users for special projects required different market research, quality control, delivery services, customer-specific R&D, engineering services, and communications services than products sold to distributors. According to Mannesmann, the fact that it devotes significantly greater resources to one of the two sales levels confirms that sales to end-users and distributors constitute separate levels of trade.

Mannesmann also claims that sales in the U.S. market also occur at these two different levels of trade. Mannesmann states that the Department verified its dedication of substantial resources and technicians' time to maintain close quality control over special project pipes manufactured for a major U.S. customer. In Mannesmann's view, sales of commodity-type pipes to distributors do not require such close collaboration or extensive customer-specific R&D and engineering services.

Mannesmann references the statistical analysis provided to the Department in Exhibit A–7 of its Supplemental Section A response as evidence that the price of the identical control number sold to a distributor is on average less than the prices to end-users.

Mannesmann concludes that the Department, pursuant to section 773(a)(7)(A) of the Act, must make an LOT adjustment to account for the differences in selling functions in the two markets. Alternatively, Mannesmann states that if the Department determines that its U.S. sales were CEP sales, the Department must make a CEP offset adjustment because the home market LOT is at a more advanced stage of distribution than the LOT of the CEP sales (see Certain Welded Carbon Standard Steel Pipes and Tubes from India; Final Results of New Shippers Antidumping Duty Administrative Review, 62 FR 47632 (September 10, 1997)).

Petitioner argues that Mannesmann failed to substantiate its claim that the two levels of trade in each market were different. Petitioner additionally notes that LOT was never discussed at the U.S. verification due to Mannesmann's lack of preparation in other areas (see U.S. Sales Verification Report at 29) and no information was provided at the home market verification to substantiate Mannesmann's claim of differences in selling functions (see German Sales Verification Report at 42).

Petitioner also points out that since Mannesmann did not provide in its response or at verification any of the data from its statistical analysis at Exhibit A–7, its claim of a pattern of consistent price differences is unsubstantiated and unverified.

According to petitioner, contrary to Mannesmann's claim, a CEP offset is not appropriate unless the Department finds more than one LOT. Therefore, in petitioner's view, Mannesmann's failure to establish the existence of two levels of trade renders a LOT adjustment under section 773(a)(7)(A) or a CEP offset under section 773(a)(7)(B) inappropriate.

Department's Position

We agree with petitioner. In determining whether separate levels of trade actually existed in the U.S. and home markets, we examined Mannesmann's marketing stages, reviewing the chains of distribution, customer categories and selling functions reported in the home market and in the United States. We agree with petitioner that Mannesmann did not substantiate its claims relating to differences in LOT.

As we stated in our preliminary results, Mannesmann's questionnaire response indicated that it provided higher levels of support to end-users than to distributors, but Mannesmann did not explain what distinguished high from low support or support these claims at verification. At verification, when we asked about differences in LOT, Mannesmann merely provided an organization chart. Mannesmann provided no documentation, as requested in the sales verification outline, regarding claimed differences or the extent of any differences in selling functions for sales to end-users versus distributors and between sales to its home market customers and the CEP LOT. We determined for the preliminary results that sales within each market and between markets are not made at different levels of trade. Of necessity, the burden is on a respondent to demonstrate that its categorizations of LOT are correct. Respondent must do so by demonstrating that selling functions for sales at allegedly the same level are substantially the same, and that selling functions for sales at allegedly different LOTs are substantially different. Mannesmann has not satisfied its burden in this case, and therefore the Department is not required to address whether prices at the allegedly different home market levels of trade resulted in a pattern of consistent price differences. Accordingly, for these final results, we continue to determine that Mannesmann's sales were at a single LOT in both markets. We are not granting Mannesmann a LOT adjustment or a CEP offset.

Comment 9

Although the Department's questionnaire, consistent with the new regulations, states that invoice date is generally to be considered the date of sale, petitioner holds that, in this case, the order confirmation date is more

appropriate than the shipment date as the date of sale. Petitioner claims that the Department's choice of shipment date for sale date is not in accordance with its past practice or its statement of current policy. Petitioner notes that, until recently, the Department's practice has been to require respondents to report the U.S. date of sale based on the date on which the material terms of the sale between the buyer and the seller were established. See Final Determination of Sales at Less Than Fair Value: Certain Forged Steel Crankshafts from the Federal Republic of Germany, 52 FR 28170, 28175 (July 28, 1987). Petitioner points out that although the new regulations indicate a preference for the invoice date, the Department recognizes that the terms of sale may change or remain negotiable from the time of the initial agreement.

Petitioner states that, in this case, the order confirmation established the terms of sale. In petitioner's view, there is no information on the record from Mannesmann indicating that the terms of the U.S. sales change between the date of the order confirmation and the date of shipment. Petitioner notes that Mannesmann reported the order confirmation date as date of sale.

Moreover, since the Department has determined that Mannesmann's U.S. sales are CEP sales, petitioner holds that it is more appropriate to use the order confirmation date because the date of export from the German producer is somewhat arbitrary. Petitioner notes that the Department has stated its preference to use dates other than the date of shipment for date of sale See Notice of Final Rule, 62 FR 27296, 27349 (May 19, 1997).

Petitioner states that any delay between the order confirmation date and the shipment date should not affect price analysis because Germany does not suffer from hyperinflation. Even more significant, according to petitioner, is the fact that the Department's goal is to compare prices that have been set in the same contemporaneous period, and by using the order confirmation date for U.S. sales and the invoice date for home market sales, the terms of sale in the two relevant markets would have been set in the same month. Petitioner concludes that it is clear that, in the preliminary results, the Department incorrectly chose to align the dates of shipment rather than the dates the terms of sale were set.

Mannesmann terms petitioner's arguments regarding the proper U.S. and home market dates of sale without merit. It maintains that, consistent with the Department's preferred approach, it used the invoice date as the date of sale when reporting home market sales because the terms of the sale and the quantity are often not finally fixed until the invoice is generated (see Section A Response at 23). Since the Department did not permit Mannesmann to report the invoice date as the U.S. date of sale (the Mannesmann invoice is issued post-shipment in Germany), Mannesmann maintains that the Department's determination to use the shipment date as the U.S. date of sale is entirely appropriate.

Given that several months often elapse between order confirmation date and shipment date, Mannesmann agrees that the shipment date for U.S. sales is most comparable to the home market invoice date because it most closely corresponds to the invoice date. Mannesmann notes that the Department has utilized shipment date as date of sale, rather than the order or order confirmation date, when the shipment date most closely corresponded to the invoice date. See Certain Internal-Combustion Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review, 62 FR 34216, 34227 (June 25, 1997). Mannesmann argues that the Department has also used shipment date as date of sale when there was a potential for the terms of sale to change. Mannesmann claims that the Department reviewed numerous change orders in this case, making shipment date the most logical choice for the U.S. date of sale. See Final Determination of Sales at Less Than Fair Value: Industrial Nitrocellulose From the Federal Republic of Germany, 55 FR 21058, 21059 (May 22, 1990). Mannesmann further states that the Department has used the shipment date as the date of sale when a respondent utilized this date for purposes of its financial reporting. Mannesmann claims that, in the normal course of business, it generates invoices on the date of shipment and that this date is used for purposes of recording sales and financial accounting in both markets.

Mannesmann also rejects petitioner's argument that any price analysis would not be affected by the time interval between order confirmation date and shipment because Germany does not suffer from "hyperinflation." Mannesmann states that many other factors (*e.g.*, market price fluctuations, a new competitor, a movement in exchange rates) can have substantial impact on the price analysis over the period of several months.

Department's Position

We agree with Mannesmann. Although we recognize that the Department's practice is normally to use the invoice date (see Memorandum from Susan G. Esserman, "Date of Sale Methodology Under New Regulations," March 29, 1996), we are continuing to use shipment date as the date of sale for U.S. sales for these final results. As we explained in the preliminary results, 62 FR at 47448, our questionnaire to Mannesmann stated that in no case could the date of sale be later than the date of shipment. The invoice date for each of Mannesmann's U.S. sales was later than the shipment date. Further, at verification we observed changes in U.S. terms of sale after the order confirmation date. See U.S. Sales Verification Exhibits 20, 21. We are thus satisfied that the date of shipment best reflects the date on which the material terms of Mannesmann's U.S. sales were established. This is also consistent with our preference of using comparable events in establishing the date of sale in both markets. As we also noted in the preliminary results, we used invoice date (which is the same as date of shipment) as date of sale in the home market. We are continuing to do so for the final results. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Tomatoes From Mexico, 61 FR 56608, 56611 (Nov. 1, 1996) ("We based date of sale on shipment date to avoid the potential for distortion of cost and price comparisons that occur when there is a significant lag time between date of shipment and date of invoice within the same market and/or between the two markets.").

Comment 10

Petitioner maintains that Mannesmann did not report any warehousing expenses associated with those sales the Department discovered at verification to be in inventory. If the information on warehousing is not available, petitioner believes the Department should make an adjustment to CEP based on the facts available pursuant to section 776 of the Act. If the Department does not have sufficient information to make a facts available determination as to warehousing expenses, petitioner believes the margin for the affected sales should be based entirely on facts available.

Mannesmann counters that no adjustments to the reported sales data were necessary to account for warehousing expenses because none were incurred (see Sections B and C Response at 43).

For those observations specifically noted by petitioner, Mannesmann points out that complete documentation for these sales was provided to the Department at verification and a review of these documents confirmed the absence of warehousing expenses.

Department's Position

We agree in part with Mannesmann and with petitioner. We have no evidence that Mannesmann incurred warehousing expenses and we did not ask about them at verification. Mannesmann's brief indicates that if they had warehousing expenses, they would have appeared on the unloading invoice in the sales trace package. However, we do know the merchandise arrived in the U.S. and did not get sold until a later date. Therefore, while we cannot prove the existence of warehousing expenses, we agree with petitioner that these sales remained in inventory for a period of time. Therefore to account for this fact, we have calculated inventory carrying costs for these final results (see Final Analysis Memorandum of March 9, 1998).

Results of Review

We determine that the following weighted-average margin exists:

Manufacturer/exporter	Period of review	Margin (percent)
Mannesmann	1/27/95–7/31/96	22.12

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between EP/CEP and NV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of small diameter circular seamless carbon and alloy steel standard, line and pressure pipe from Germany, within the scope of the order, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate of 57.72 percent, the all-others rate, established in the LTFV investigation, shall remain in effect until publication of the final results of the next administrative review.

We will calculate importer-specific *ad valorem* duty assessment rates based on the entered value of each entry of subject merchandise during the POR.

Notification of Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested.

This administrative review and notice are in accordance with Section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: March 9, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–7017 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031098D]

Marine Mammals

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Dr. James T. Harvey, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039, has been issued an amendment to Scientific Research Permit No. 974 (P368F).

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713-2289); and Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713-2289.

SUPPLEMENTARY INFORMATION: On January 6, 1998, notice was published in the Federal Register (63 FR 471) that an amendment of Permit No. 974, issued September 7, 1995 (60 FR 46577), had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq.), and the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The amendment authorizes the researcher to: determine body fat of harbor seals (Phoca vitulina); handle 20 harbor seal pups up to four times and 80 pups one time annually to track changes in health, physiological condition, and diving behavior; handle 20 adults and 20 juveniles four times annually to determine seasonal shifts in health, physiological condition, and diving behavior; and harass 200 additional harbor seals as a result of the above activities.

Dated: March 12, 1998.

Art Jeffers,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–7039 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030598A]

Marine Mammals

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

ACTION: Receipt of applications.

SUMMARY: Notice is hereby given that Bruce A. Carlson, Ph.D., University of Hawaii at Manoa, Waikiki Aquarium, 2777 Kalakaua Avenue, Honolulu, HI 96815, has applied in due form for a permit to take Hawaiian monk seals, *Monachus schauinslandi*, for purposes of scientific research and enhancement. In addition, Douglas P. DeMaster, Ph.D., National Marine Mammal Laboratory, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Building 1, Seattle, WA 98115–0070, has applied in due form for a permit to take Steller sea lions, *Eumetopias jubatus*, and northern fur seals, *Callorhinus ursinus*, for the purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before April 17, 1998.

ADDRESSES: The applications and related documents are available for review upon written request or by appointment: See **SUPPLEMENTARY INFORMATION.**

Written comments or requests for a public hearing on these applications should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on these particular requests would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permits are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The activity proposed by Dr. Carlson involves the continued holding of three Hawaiian monk seals for the purposes of enhancing the survival and recovery of the species, and for scientific research. The seals have been held under the authority of Scientific Research Permit Numbers 413 and 482, issued to the Southwest Fisheries Science Center (SWFSC). The applicant seeks to: assess the efficiency with which Hawaiian monk seals assimilate and metabolize amino acids and fatty acids from common prey types; and elucidate and monitor how reproductive and metabolic activity of male Hawaiian monk seals are related.

In addition to the projected research above, the seals will be made available for scientific studies to other researchers whose protocols have been approved by the University of Hawaii Institutional Animal Care and Use Committee (UHIACUC) and the National Marine Fisheries Service, Office of Protected Resources. Due to the possibilities of disease transmission, release would present a finite and unwarranted risk to the wild population. Any public display of the seals would be incidental to and not interfere with the proposed research and enhancement activities.

The second applicant, Dr. DeMaster, seeks authorization to count, capture, handle, flipper tag, blood sample, and biopsy sample Steller sea lion pups, dart biopsy adult and juvenile Steller sea lions, and disturb Stellers of all ages during the conduct of aerial surveys. Research activities are scheduled to take place in Alaska. In addition, the applicant requests authority to disturb a small number of northern fur seals on Bogoslov Island during aerial surveys.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the Federal Register, NMFS is forwarding copies of these applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

The application and related documents submitted by Dr. Carlson may be reviewed in the following locations:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; and

Coordinator, Pacific Area Office, National Marine Fisheries Service, NOAA, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396;

The application and related documents submitted by Dr. DeMaster may be reviewed in the following locations:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Building 1, Seattle, WA 98115–0700; and

Regional Administrator, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802–1668.

Dated: March 12, 1998.

Art Jeffers,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–7040 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Technical Advisory Committee To Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure; Meeting

AGENCY: Technology Administration, Commerce.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure will hold a meeting on April 22–23, 1998. The Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure was established by the Secretary of Commerce to provide industry advice to the Department on encryption key recovery for use by federal government

agencies. All sessions will be open to the public.

DATES: The meeting will be held on April 22–23, 1998 from 9:00 a.m. to 6:00 p.m.

ADDRESSES: The meeting will take place at the Tremont House Hotel, 275 Tremont Street, Boston, MA.

FOR FURTHER INFORMATION CONTACT: Edward Roback, Committee Secretary and Designated Federal Official, Computer Security Division, National Institute of Standards and Technology, Building 820, Room 426, Gaithersburg, Maryland 20899; telephone 301–975–3696. Please do not call the conference facility regarding details of this meeting.

SUPPLEMENTARY INFORMATION:

1. Agenda

Opening Remarks

Chairperson's Remarks

News Updates (Members, Federal Liaisons, Secretariat)

Working Group (WG) Reports

Intellectual Property Issues (as necessary)

Public Participation

Plans for Next Meeting

Closing Remarks

Note that the items in this agenda are tentative and subject to change due to logistics and speaker availability.

2. Public Participation

The Committee meeting will include a period of time, not to exceed thirty minutes, for oral comments from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the individual identified in the **FOR FURTHER INFORMATION** section. In addition, written statements are invited and may be submitted to the Committee at any time. Written comments should be directed to the Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure, Building 820, Room 426, National Institute of Standards and Technology, Gaithersburg, Maryland 20899. It would be appreciated if sixty copies could be submitted for distribution to the Committee and other meeting attendees.

3. Additional information regarding the Committee is available at its world wide web homepage at: http://csrc.nist.gov/tacdfipsfkmi/.

4. Should this meeting be canceled, a notice to that effect will be published in the **Federal Register** and a similar notice placed on the Committee's electronic homepage.

Mark Bohannon,

Chief Counsel for Technology Administation.

[FR Doc. 98–7049 Filed 3–17–98; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Department of Defense, Office of the Under Secretary of Defense (Acquisition and Technology)/Office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations) announces the proposed extension of a public information collection and seeks pubic comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 18, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations)/Office of Financial and Economic Analysis, ATTN: Mr. Michael Scullin, 5203 Leesburg Pike, Two Skyline Place, Suite 1401, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: To request further information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Mr. Michael Scullin at (703) 681–5479.

Title, Associated Form, and OMB Number: Department of Defense Application for Priority Rating for Production or Construction Equipment, DD Form 691, OMB Number 0704–0055.

Needs and Uses: Executive Order 12919 delegated to DoD authority to require certain contracts and orders relating to approved Defense Programs to be accepted and performed on a preferential basis. This program helps contractors acquire industrial equipment in a timely manner, thereby facilitating development and support of weapons systems and other important Defense Programs.

Affected Public: Businesses or Other for-Profit, Not-for-Profit Institutions; Federal Government.

Annual Burden Hours: 610.

Number of Respondents: 610.

Responses to Respondent: 1.

Average Burden Per Response: 1 Hour.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This information is used so the authority to use a priority rating in ordering a needed item can be granted. This is done to assure timely availability of production or construction equipment to meet current Defense requirements in peacetime and in case of national emergency. Without this information DoD would not be able to assess a contractor's stated requirement to obtain equipment needed for fulfillment of contractual obligations. Submission of this information is voluntary.

Dated: March 12, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–6917 Filed 3–17–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission of OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Foreign Acquisition—Defense Federal Acquisition Regulation Supplement Part 225 and Related Clauses at 252.225; DD Form 2139; OMB Number 0704–0229.

Type of Request: Extension.

Number of Respondents: 31,347.
Responses per Respondent: Approximately 7.
Annual Responses: 224,262.
Average Burden per Response: 20 minutes (reporting only); 1.7 hours (including recordkeeping).
Annual Burden Hours: 374,428 (74,333 reporting hours; 300,095 recordkeeping hours).
Needs and uses: This information collection requirement pertains to information used to ensure contractor compliance with restrictions on the acquisition of foreign products imposed by statute or policy to protect the industrial base. Other information is required for compliance with U.S. trade agreements and Memoranda of Understanding, which promote reciprocal trade with U.S. allies, and for inclusion in reports to the Department of Commerce on the Balance of Payments Program.
Affected Public: Business or Other For-Profit.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. Robert Cushing.
Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: March 12, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–6916 Filed 3–17–98; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–27]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified test of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representives, Transmittal 98–27, with attached transmittal, policy justification, and sensitivity of technology pages.

Dated March 12, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY.

WASHINGTON, DC 20301-2800

04 MAR 1998

In reply refer to:
I-61710/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-27, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Republic of Korea for defense articles and services estimated to cost $214 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 98-27

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

(i) **Prospective Purchaser:** Republic of Korea

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 0 million
Other	$ 214 million
TOTAL	$ 214 million

(iii) **Description of Articles or Services Offered:** Twelve MK 14 weapon direction systems, 12 OT-134 transmitters, U.S. Government and contractor engineering and logistics personnel services, installation and checkout of spares, installation support, personnel training and training equipment, support and test equipment, spare and repair parts, publications and technical documentation, and other related elements of logistics support.

(iv) **Military Department:** Navy (LOZ)

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** None

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached.

(vii) **Date Report Delivered to Congress:** 04 MAR 1998

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Republic of Korea - MK-41 Missile Launcher Sub-Systems, Support Equipment and Training

The Republic of Korea has requested a possible sale of 12 MK 14 Weapon Direction Systems (WDS), 12 OT-134 Continuous Wave Illumination (CWI) Transmitters, U.S. Government and contractor engineering and logistics personnel services, installation and checkout of spares, installation support, personnel training and training equipment, support and test equipment, spare and repair parts, publications and technical documentation, and other related elements of logistics support. The estimated cost is $214 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Northeast Asia.

The Republic of Korea intends to use the MK 14 WDS and OT-134 CWI transmitters for STANDARD missile fire control (sends launch signal) and post-launch control (controls missile in-flight). Korea will have no difficulty absorbing this support equipment into its armed forces. These are components of the MK-41 STANDARD missile launcher systems that will potentially be installed on indigenously produced naval vessels.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be Raytheon Electronic Systems, Wayland, Massachusetts, and Tracor Systems Engineering, Silver Spring, Maryland. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will require the assignment of four U.S. Government personnel and 14 contractor representatives in-country to support the program through the development, production and equipment installation phases. The period of time required to be on-site is approximately 14 months.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 98-27

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The MK 14 Weapon Direction System (WDS) is classified Secret. The OT-134 Continuous Wave Illumination (CWI) Transmitter is unclassified, but considered sensitive. Technical documentation and publications for testing, operation and maintenance are Confidential.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 98–6918 Filed 3–17–98; 8:45 am]
BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

Department of the Army

Army Education Advisory Committee

AGENCY: U.S. Army War College.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following committee meeting:

Name of Committee: U.S. Army War College Subcommittee of the Army Education Advisory Committee.

Dates of Meeting: April 5, 6, and 7, 1998.

Place: Root Hall, U.S. Army War College, Carlisle Barracks, Pennsylvania.

Time: 8:30 a.m.–5:00 p.m.

Proposed Agenda: Receive information briefings; conduct discussions with the Commandant, staff and faculty; review USAWC Master's Degree Campaign Plan and supplemental report to the Department of Education; plan future membership and composition of the Board of Visitors; and provide guidance regarding accreditation and areas for improvement.

FOR FURTHER INFORMATION CONTACT: Colonel Thomas D. Scott, Box 524, U.S. Army War College, Carlisle Barracks, PA 17013 or telephone (717) 245–3907.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Committee after receiving advance approval for participation. To request advance approval or obtain further information, contact Colonel Thomas D. Scott at the above address or phone number.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–7047 Filed 3–17–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Military Traffic Management Command (MTMC) Freight Traffic Rules Publication (MFTRP) No. 1A and MTMC Guaranteed Traffic Rules Publication No. 50 (MGTRP No. 50): Proposed Changes

AGENCY: Military Traffic Management Command (MTMC), DoD.

ACTION: Notice.

SUMMARY: MTMC proposes to change the procedures used to reimburse commercial motor carriers for the cost of overdimensional and overweight permits. MTMC is making the changes to support an Office of the Secretary of Defense initiative to automate the DoD Government bill of lading (GBL) costing and payment process.

DATES: Comments on the proposed changes must be received not later than May 18, 1998.

ADDRESSES: Comments may be mailed to Headquarters, Military Traffic Management Command, ATTN: MTTM–O, (Mr. John Alexander) 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Mr. John Alexander, (703) 681–6870.

SUPPLEMENTARY INFORMATION: Currently, motor carriers seek reimbursement for permit costs after a movement is completed. This method is not consistent with DoD's goal of automated costing and payment. In the proposed changes, carriers must seek reimbursement for permit costs in their charges for transporting overdimensional and/or overweight shipments. To implement the new procedures, appropriate changes must be made in two MTMC rules publications, MFTRP No. 1A and MGTRP No. 50.

In MFTRP No. 1A, two rules items will be revised and one item will be cancelled. Item 415, Overdimensional Freight Service (OD), and Item 416, Overweight Permit Shipments will be revised, and Item 417, Overdimensional Permit Charges, will be cancelled. The items will read as follows:

Item 415 Overdimensional Freight Service (OD)

1. Carriers shall provide overdimensional freight service for DoD shipments, subject to the following:

a. *Definition.* A shipment will be considered to be overdimensional when it contains one or more non-divisible articles which measure in excess of 576 inches (48 feet) in length, 102 inches (8 feet 6 inches) in width, or 162 inches (13 feet 6 inches) in height from the ground to the top of the article after loading. Although paragraph 2 of this item provides coverage for overlength charges, overlength dimensional charges will not be assessed, for interstate or intrastate movements, when the gross length dimensions of the tractor and loaded semi-trailer combination are within the maximum gross length for such equipment combination on interstate and federally designated highways or other state highways and supplemental routes.

b. *Line-haul charges.* Line-haul transportation charges will be based on the applicable truckload charge (Rate Qualifiers PL and PM), or highest published truckload minimum weight applicable to the equipment loaded by the shipper, or actual weight if in excess of the minimum weight, and accompanying truckload rate. When distance rates are applicable, the determination of mileage will be subject to the practical route mileage determined by use of the governing mileage guide.

c. *Advancing Charges.* The charge for advancing monies, as outlined in Item 55, is not applicable to this item.

2. *Overdimensional charges.* When a shipment is overdimensional in more than one dimension (i.e. width, length, or height) the overdimensional mileage charge producing the greatest total charges will apply. In no case will overdimensional mileage charges be assessed on more than one dimension.

a. *Overwidth Charges.* Minimum Charge: OD(1) $____ Article Width (in inches)

Over	Not over	Charges per mile
102	108	OD(2)$____
108	120	OD(3)$____
120	132	OD(4)$____
132	144	OD(5)$____
144	156	OD(6)$____
156	168	OD(7)$____
168	180	OD(8)$____
180	204	OD(9)$____
204	.....	OD(10)$____ per foot or fraction thereof on that portion over 17 feet wide, plus the charge per mile in OD(9).

b. *Overlength Charges.* Minimum Charge: OD(11)$____ Article length (in inches)

Over	Not over	Charges per mile
576	600	OD(12)$____
600	660	OD(13)$____
660	720	OD(14)$____
720	780	OD(15)$____
780	.....	OD(16)$____ plus OD(17)$____ per foot or fraction thereof for that portion over 65 feet long.

c. *Overheight Charges.* Minimum Charge: OD(18)$____ Article height (in inches)

Over	Not over	Charges per mile
162	168	OD(19)$____
168	174	OD(20)$____
174	180	OD(21)$____
180	192	OD(22)$____
192	204	OD(23)$____

Over	Not over	Charges per mile
204	.....	OD(24)$____

d. Article height is measured from the ground to the top of the article after loading.

e. These charges are to reimburse the carrier for the costs of overdimensional permits, bonds, tolls, fees and for any administrative cost incurred in obtaining such services and will be in addition to line-haul transportation costs.

Item 416 Overweight Permit Shipments (OW)

1. Carriers shall provide the transportation of overweight shipments, subject to the following:

a. *Line-haul Charges.* Line-haul transportation charges for non-divisible articles exceeding 48,000 pounds will be determined from rates contained in the carrier's individual tender. When distance rates and/or permit mileage is involved, charges shall be based on the practical route mileage determined by use of the governing mileage guide.

b. *Advancing Charges.* The charge for advancing monies, as outlined in Item 55, is not applicable to this item.

2. *Overweight Charges.*

a. When a vehicle is loaded with a shipment weighing in excess of 48,000 pounds and a carrier is required to obtain a permit(s) and associated services from any city, county, state or municipal agency in order to transport the shipment, the following charges will be assessed for that weight in excess of 48,000 pounds:

Weight in excess of: (in pounds)	Charges per mile
48,000 but less than 68,000.	OW(1)____
68,000 but less than 88,000.	OW(2)____
88,000 but less than 108,000.	OW(3)____
108,000 and over	OW(4)____

b. These charges are to reimburse the carrier for costs of permits, bonds, tolls, fees, and for any administrative cost spent in obtaining such services and will be in addition to line-haul transportation costs.

Item 417 Overdimensional Permit Charges

This item is cancelled. All overdimensional charges to include permits, bonds, tolls, fees, and any other administrative costs spent in obtaining such services will be included in Item 415, Overdimensional Freight Service (OD).

In MGTRP No. 50, two items will be revised and one item will be cancelled. Item 385, Overdimensional Freight Service (520), and Item 390, Overweight Shipment (PER), will be revised, and Item 400, Permits and Special Tolls, will be cancelled. The items will read as follows:

Item 385 Overdimensional Freight Service (520)

1. Carriers shall provide overdimensional freight service for DoD shipments, subject to the following:

a. *Definition.* A shipment will be considered to be overdimensional when it contains one or more non-divisible articles which measure in excess of 576 inches (48 feet) in length, 102 inches (8 feet 6 inches) in width, or 162 inches (13 feet and 6 inches) in height from the ground to the top of the article after loading. Although paragraph 2 of this item provides coverage for overlength charges, overlength dimensional charges will not be assessed, for interstate or intrastate movements, when the gross length dimensions of the tractor and loaded semi-trailer combination are within the maximum gross length for such equipment combination on interstate and federally designated highways or other state highways and supplemental routes.

b. *Line-haul charges.* Line-haul transportation charges will be based on the applicable truckload charge (Rate Qualifiers VH and VU), or highest published truckload minimum weight applicable to the equipment loaded by the shipper, or actual weight if in excess of the minimum weight, and accompanying truckload rate. When distance rates are applicable, the determination of mileage will be subject to the practical route mileage determined by use of the governing mileage guide.

c. *Advancing Charges.* The charge for advancing monies, as outlined in Item 205, is not applicable to this item.

2. *Overdimensional charges.* When a shipment is overdimensional in more than one dimension (i.e. width, length, or height) the overdimensional mileage charge producing the greatest total charges will apply. In no case will overdimensional mileage charges be assessed on more than one dimension.

a. *Overwidth Charges.* Minimum Charge: 520(1) $____ Article Width (in inches)

Over	Not over	Charges per mile
102	108	520(2) $____
108	120	520(3) $____
120	132	520(4) $____
132	144	520(5) $____
144	156	520(6) $____
156	168	520(7) $____
168	180	520(8) $____
180	204	520(9) $____
204		520(10) $____ per foot or fraction thereof on that portion over 17 feet wide, plus the charge per mile in 520(9).

b. *Overlength Charges.* Minimum Charge: 520(11) $____. 4Article length (in inches)

Over	Not over	Charges per mile
576	600	520(12) $____
600	660	520(13) $____
660	720	520(14) $____
720	780	520(15) $____
780		520(16) $____ plus 520(17) $____per foot or fraction thereof for that portion over 65 feet long.

c. *Overheight Charges.* Minimum Charge: 520(18) $____ Article height (in inches)

Over	Not over	Charges per mile
162	168	520(19) $____
168	174	520(20) $____
174	180	520(21) $____
180	192	520(22) $____
192	204	520(23) $____
204		520(24) $____

d. Article height is measured from the ground to the top of the article after loading.

e. These charges are to reimburse the carrier for the costs of overdimensional permits, bonds, tolls, fees and for any administrative cost incurred in obtaining such services and will be in addition to line-haul transportation costs.

Item 390 Overweight Shipment (Per)

1. Carriers shall provide the transportation of overweight shipments, subject to the following:

a. *Line-haul Charges.* Line-haul transportation charges for non-divisible articles exceeding 48,000 pounds will be determined from rates contained in the carrier's individual tender. When distance rates and/or permit mileage is involved, charges shall be based on the practical route mileage determined by use of the governing mileage guide.

b. *Advancing Charges.* The charge for advancing monies, as outlined in Item 205, is not applicable to this item.

2. *Overweight Charges.*

a. When a vehicle is loaded with a shipment weighing in excess of 48,000 pounds and a carrier is required to obtain a permit(s) and associated services from any city, county, state or municipal agency in order to transport the shipment, the following charges will be assessed for that weight in excess of 48,000 pounds:

Weight in excess of: (in pounds)	Charges per mile
48,000 but less than 68,000.	PER(1) ____
68,000 but less than 88,000.	PER(2) ____
88,000 but less than 108,000.	PER(3) ____
108,000 and over	PER(4) ____

b. These charges are to reimburse the carrier for costs of permits, bonds, tolls, fees, and for any administrative cost spent in obtaining such services and will be in addition to line-haul transportation costs.

Item 400 Permits and Special Tolls

This item is cancelled. All overdimensional charges to include permits, bonds, tolls, fees, and any other administrative costs spent in obtaining such services will be included in Item 385, Overdimensional Freight Service (520).

Finally, the following definition will be added to Item 1001 of MFTRP No. 1A and to Item 1005 of MGTRP No. 50:

Practical Route Mileage—Mileage calculated over the most efficient route, primarily including National Interstate Highways, U.S. Highways, and Primary State Highways.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–7048 Filed 3–17–98; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patents for nonexclusive, partially exclusive or exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

These patents covers a wide variety of technical arts including: A Simulator for Smart Munitions Testing and An Apparatus for Variable Optical Focusing.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patents listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

Title: Simulator for Smart Munitions Testing.

Inventor: Mark D. Sevachko.

Patent Number: 5,719,797.

Issued Date: February 17, 1998.

Title: Apparatus for Variable Optical Focusing for Processing Chambers.

Inventor: Somnath Sengupta.

Patent Number: 5,711,810.

Issued Date: January 27, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Rausa, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Aberdeen Proving Ground, Maryland 21005–5055, tel: (410) 278–5028; fax: (410) 278–5820.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–7046 Filed 3–17–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent To Prepare a Programmatic Environmental Impact Statement (EIS) for the Aliso Creek Watershed Feasibility Study; Orange County, CA

AGENCY: U.S. Army Corps of Engineers (Corps), Los Angeles District, DoD.

ACTION: Notice of intent.

SUMMARY: The Aliso Creek Watershed encompasses a drainage area of approximately thirty-six (36) square miles in southern Orange County extending approximately nineteen (19) miles from the foothills of the Santa Ana Mountains to the Pacific Ocean south of Laguna Beach. Rapid residential and commercial development within the past thirty-five years has produced a number of unintended consequences on the watershed and its creeks. These include decreased water quality and supply, loss of habitat, flooding, erosion, and loss of recreational opportunities. In response to these and other problems raised by various federal and state offices, interest groups, and private parties the Corps is developing an integrated watershed management plan to enhance positive trends in maintaining the Aliso Creek Watershed system.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. Timothy J. Smith, U.S. Army Corps of Engineers, Attn: CESPL–PD–RN, P.O. Box 532711, Los Angeles, California 90053–2325; phone (213) 452–3854; email tjsmith@spl.usace.army.mil

SUPPLEMENTARY INFORMATION: To prepare for preparation of the EIS, the Corps will be conducting a public scoping meeting on March 25, 1998, at 7 p.m., at the Laguna Niguel City Council Chambers, located at 27841 La Paz Road, Laguna Niguel, California. This scoping will be held to solicit public input on significant environmental issues associated with the proposed project. The public, as well as Federal, State, and local agencies are encouraged to participate in the scoping process by attending the Scoping Meeting and/or submitting data, information, and comments identifying relevant environmental and socioeconomic issues to be addressed in the environmental analysis. Useful information includes other environmental studies, published and unpublished data, alternatives that should be addressed in the analysis, and potential environmental enhancement and restoration opportunities that exist in the watershed. Individuals and agencies may offer information or data relevant to the proposed study and provide comments suggestions by attending the public scoping meeting, or by mailing the information to Mr. Timothy J. Smith. Requests to be placed on the mailing list for announcements and the Draft EIS should be sent to Mr. Timothy J. Smith.

Alternatives: The study will develop an integrated watershed management plan as well as a list of potential environmental enhancement and restoration opportunities throughout the Aliso Creek Watershed. Specific measures selected for implementation will be analyzed in detail in supplementary National Environmental Policy Act/California Environmental Quality Act documentation.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–7044 Filed 3–17–98; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent To Prepare a Joint Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the Hamilton Army Airfield Wetland Restoration Project, Marin County, CA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent.

SUMMARY: The U.S. Army Corps of Engineers, San Francisco District and the California State Coastal Conservancy propose to restore wetland habitat at the former Hamilton Army Airfield and adjacent properties. The airfield lies on former tidal wetland that has been diked to protect it from tidal flooding. The area has subsided significantly since its removal from tidal action. The project may modify existing levees and construct new ones around the project area. Dredged material suitable for wetland creation would be used to bring the area to an elevation where marsh would establish itself, after which the bayfront levee would be breached, returning tidal action to the area. Restoration without the use of dredged material is also being considered.

FOR FURTHER INFORMATION CONTACT: Questions regarding the scoping process or preparation of the EIS/EIR may be directed to Eric Jolliffe, U.S. Army Corps of Engineers, 333 Market Street, Seventh Floor, San Francisco, CA 94105–2102, (415) 977–8543, or Terri Nevins, California State Coastal Conservancy, 1330 Broadway, Suite 1100, Oakland, CA 94612–2530, (510) 286–4161.

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the California Environmental Quality Act (CEQA), and Public Law 102–484 Section 2834, as amended by Public Law 104–106 Section 2867, the Department of the Army and the California State Coastal Conservancy hereby give notice of intent to prepare a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Proposed Hamilton Army Airfield Wetland Restoration Project, Marin County, California.

The U.S. Army Corps of Engineers will be the lead agency in preparing the EIS. The EIS/EIR will provide an analysis supporting the requirements of both NEPA and CEQA in addressing impacts to the environment which may result from restoring wetland habitat at the former Hamilton Army Airfield and adjacent properties.

1. Proposed Action

The Hamilton restoration site consists of the former Hamilton Army Airfield, adjacent Navy ballfields, and the former Hamilton North Antenna Field. The project would restore up to 950 acres of tidal marsh and seasonal wetland at the site. All restoration alternatives have a goal of creating a mix of 80% tidal marsh and 20% seasonal wetland. Existing levees would be raised and new ones would be constructed around the perimeter of the site. The re-establishment of tidal marsh would require higher elevations than currently exist to allow the growth of wetland vegetation. These higher elevations could probably be achieved by breaching the existing bayfront levee and allowing tidal activity to deposit sediments. However, placement of suitable dredged material at the site to raise elevations closer to the eventual marsh plain would allow marsh vegetation to establish much sooner. In addition, the placement of suitable dredged material or other suitable fill is needed to achieve target elevations for seasonal wetland habitat restoration. Placement of dredged material would be accomplished by pumping a slurry of dredged material to the site from barges moored in San Pablo Bay.

2. Project Alternatives

a. No action. The area would remain free from tidal action as it is now and no marsh would develop. Pumps would continue to be required to remove runoff water.

b. Wetland would be restored to the Airfield and Navy ballfields without the use of dredged material. Approximately 700 acres of wetland would be restored.

c. Wetland would be restored to the Airfield and Navy ballfields using dredged material to accelerate marsh establishment and raise elevations for seasonal wetlands. Approximately 700 acres of wetland would be restored.

d. Wetland would be restored to the Airfield and adjacent properties at the site without the use of dredged material. Approximately 950 acres of wetland would be restored.

e. Wetland would be restored to the Airfield and adjacent properties at the site using dredged material to accelerate marsh establishment and raise elevations for seasonal wetlands. Approximately 950 acres of wetland would be restored.

3. Scoping Process

Federal, state and local agencies, and interested individuals are invited to participate in the scoping process to determine the range of issues and alternatives to be addressed. The California State Coastal Conservancy and the U.S. Army Corps of Engineers will hold two public scoping meetings to receive oral and written comments at the following locations and times:

9:30 am–12:00 pm, March 25, 1998, Hamilton Community Center, 203 Bel Bonito Street, Novato, California

And

7:30 pm–10:00 pm, March 30, 1998, Novato City Council Chambers, 908 Machin Drive, Novato, California.

In addition, written comments will also be accepted until April 8, 1998 at the addresses listed above.

4. Availability of EIS/EIR

The Draft EIS/EIR should be available for public review in August 1998.

Richard G. Thompson,

Corps of Engineers, District Engineer.

[FR Doc. 98–7042 Filed 3–17–98; 8:45 am]

BILLING CODE 3710–19–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent To Prepare a Programmatic Environmental Impact Statement (EIS) for the San Juan Creek Watershed Feasibility Study; Orange County, CA

AGENCY: U.S. Army Corps of Engineers (Corps), Los Angeles District, DoD.

ACTION: Notice of intent.

SUMMARY: The San Juan Watershed encompasses a drainage area of approximately 176 square miles in southern Orange County. Eight major tributaries feed San Juan Creek along its twenty-seven mile course from the Cleveland National Forest in the Santa Ana Mountains to the Pacific Ocean at Doheny State Beach near Dana Point Harbor. Rapid development since the early 1980s has produced a variety of environmental concerns that threaten the overall functional integrity of the watershed. Issues warranting concern identified in the Reconnaissance Study include channel degradation, loss of habitat, decreased water quality and supply, loss of recreational and aesthetic values, and increased flooding. In response to these and other problems raised by various federal and state offices, interest groups, and private parties the Corps is developing an

integrated watershed management plan to enhance positive trends in maintaining the San Juan Creek Watershed system.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. Timothy J. Smith, U.S. Army Corps of Engineers, Attn: CESPL–PD–RN, P.O. Box 532711, Los Angeles, California 90053–2325; phone (213) 452–3854; email tjsmith@spl.usace.army.mil

SUPPLEMENTARY INFORMATION: To prepare for preparation of the EIS, the Corps will be conducting a public scoping meeting on March 26, 1998, at 7 p.m., at the Del Obispo Community Center, located at 34052 Del Obispo Road, Dana Point, California. This scoping meeting will be held to solicit public input on significant environmental issues associated with the proposed project. The public, as well as Federal, State, and local agencies are encouraged to participate in the scoping process by attending the Scoping Meeting and/or submitting data, information, and comments identifying relevant environmental and socioeconomic issues to be addressed in the environmental analysis. Useful information includes other environmental studies, published and unpublished data, alternatives that should be addressed in the analysis, and potential environmental enhancement and restoration opportunities that exist in the watershed. Individuals and agencies may offer information or data relevant to the proposed study and provide comments suggestions by attending the public scoping meeting, or by mailing the information to Mr. Timothy J. Smith. Requests to be placed on the mailing list for announcements and the Draft EIS should be sent to Mr. Timothy J. Smith.

Alternatives: The study will develop an integrated watershed management plan as well as a list of potential environmental enhancement and restoration opportunities throughout the San Juan Watershed. Specific measures selected for implementation will be analyzed in detail in supplementary National Environmental Policy Act/ California Environmental Quality Act documentation.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–7043 Filed 3–17–98; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Wolf River, Memphis, TN, Feasibility Study

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The purpose of this study is to determine the feasibility of providing aquatic and terrestrial ecosystem restoration, wetlands protection, and increased recreational opportunities within the Wolf River Basin of west Tennessee and north Mississippi. A resolution by the Committee on Public Works and Transportation of the U.S. House of Representatives on 24 September 1992 provides study authorization.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Bodron, telephone (901) 544–3639, CEMVM–DD–P, 167 North Main Street, B–202, Memphis, TN 38103–1894. Questions regarding the DEIS may be directed to Mr. Richard Hite, telephone (901) 544–0706, CEMVM–PD–R.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

A Corps reconnaissance study, completed October 1995, revealed that channelization and realignment of the lower 22 miles of the river have significantly reduced seasonal flooding, eliminated large amounts of riparian forest and fisheries habitat, induced progressive channel bank and bed erosion, and initiated long-term drying of adjacent wetlands.

Also, agricultural practices have contributed to sediment movement and deposition. Sediment deposition in tributary streams and wetlands has adversely impacted fish and wildlife habitat and killed valuable timber. The Wolf River study will attempt to identify an economically and environmentally feasible plan that would retard damage to and help restore components of this important ecosystem. The study area currently comprises the entire Wolf River Basin. The river is 86 miles in length; and the drainage basin includes portions of Shelby, Fayette, and Hardeman counties in west Tennessee and parts of Marshall, Benton, and Tippah counties in north Mississippi.

2. Alternatives

Alternatives being considered include combinations of features such as main channel weirs to reduce erosion and provide fish habitat, reforestation, and wetland restoration. Alternative plans will be compared to the No Action alternative.

3. Scoping Process

An intensive public involvement program will be initiated and maintained throughout this study to (1) solicit input from individuals and interested parties so that problems, needs, and opportunities within the project area can be properly identified and addressed and (2) provide status updates to concerned organizations and the general public. Scoping is a critical component of the overall public involvement program. The scoping process is designed to provide early detection of public concerns regarding needed studies, plan alternatives, procedures and other important study-related matters. Affected federal, state and local agencies; affected Indian tribes; and other interested private organizations and parties are invited to participate in the scoping process. This study will analyze project impacts (positive and negative) to significant area resources such as wildlife, fish, endangered species, wetlands, water quality and recreation.

4. Public Scoping Meeting

A public scoping meeting will likely be held in Memphis, Tennessee, during the Spring of 1998.

5. Availability of DEIS

It is anticipated that the DEIS will be available for public review during the Spring of 1999. A public meeting will be held during the review period to receive comments and address questions concerning the DEIS.

Mary V. Yonts,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 98–7045 Filed 3–17–98; 8:45 am]

BILLING CODE 3710–KS–M

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, March 25, 1998. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1:30

p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

In addition to the subjects listed which are scheduled for public hearing, the Commission will also address the following: Minutes of the February 18, 1998 business meeting; announcements; General Counsel's Report; report on Basin hydrologic conditions; a resolution concerning appointments to the Commission's Estuary Model Peer Review Team; status of compliance: Evansburg Water Company; a resolution to amend DRBC's agreement with Hydro Qual, Inc., and public dialogue.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Heritage-Steeplechase L.P. D–97–33 CP.* An application for approval of a ground water withdrawal project to supply up to 4.39 million gallons (mg)/30 days of water to the applicant's distribution system from new Well Nos. 1 through 3, and to limit the withdrawal limit from all wells to 4.39 mg/30 days. The project is located in Plumstead Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

2. *Pocono Mountain School District D–98–3 CP.* A project to modify the applicant's existing sewage treatment plants (STPs) which will continue to serve its junior and senior high schools in Paradise and Pocono Townships, Monroe County, Pennsylvania. Currently, there are two STPs operating in combination that produce a single discharge of tertiary treated effluent to Swiftwater Creek in Pocono Township. The applicant proposes to modify the existing senior high school STP and eliminate the junior high school STP. The new STP will continue to produce tertiary treated effluent to be discharged at the same flow (0.0286 million gallons per day) via the existing outfall.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at (609) 883–9500 ext. 221 concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary at (609) 883–9500 ext. 203 prior to the hearing.

Dated: March 10, 1998.

Susan M. Weisman,

Secretary.

[FR Doc. 98–7001 Filed 3–17–98; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy

Proposed Subsequent Arrangement

AGENCY: Energy.

ACTION: Subsequent Arrangement.

SUMMARY: Pursuant to paragraph 2 of Article 6 of the Agreement for Cooperation Between the Government of the United States of America and the Government of the Argentine Republic Concerning the Peaceful Uses of Nuclear Energy, notice is hereby given of a proposed "subsequent arrangement" with respect to the alteration in form or content of unirradiated high enriched uranium (HEU) subject to the Agreement.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the alteration in form or content of up to 2 kilograms of unirradiated HEU subject to the Agreement in Argentina for the purpose of recovering and processing uranium for the production of medical isotopes.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: March 12, 1998.

For the Department of Energy.

Cherie P. Fitzgerald,

Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 98–6987 Filed 3–17–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–264–000]

Arkla, a Division of NorAm Energy Corp.; Notice of Petition for Declaratory Order

March 12, 1998.

Take notice that on March 4, 1998, Arkla, a division of NorAm Energy Corp. (Arkla), P.O. Box 751, Little Rock, Arkansas 72203, filed with the Commission in Docket No. CP98–264–000 a petition for a declaratory order stating that certain pipeline facilities Arkla would purchase from Louisiana-Nevada Transit Company (LNT) would be exempt from the Commission's jurisdiction under Section 1(b) of the Natural Gas Act (NGA), which is open to the public for inspection.

Arkla proposes to purchase approximately 78 miles or 8-inch diameter pipe between Cotton Valley, Webster Parish, Louisiana, and Okay, Hempstead County, Arkansas, and approximately 17 miles of 6-inch diameter pipe that extends from Haynesville, Claiborne Parish, Louisiana, to an interconnection with the 8-inch diameter pipe in Webster Parish (collectively, the LNT facilities). Arkla states that LNT has contemporaneously filed a request with the Commission in Docket No. CP98–263–000 to abandon the LNT pipeline facilities by sale to Arkla.

Arkla states that it would blind-plate the 8-inch diameter pipeline at the Arkansas-Louisiana state line and operate the separated segments as reconfigured parts of its local distribution systems in Arkansas and Louisiana. Arkla also states that it operates as a local distribution company that distributes natural gas at retail solely within the states of Arkansas, Louisiana, Oklahoma, and Texas. Arkla further states that its operations are confined to each of the respective states and its local activities and operations within each state are regulated by the public service commissions of each respective state.

Any person desiring to be heard or to make any protest with reference to said petition should on or before March 23, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CRR 157.10). All protects filed with the Commission will be considered by it in determining the appropriate action to the taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6929 Filed 3–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–263–000]

Louisiana-Nevada Transit Company; Notice of Application

March 12, 1998.

Take notice that on March 4, 1998, Louisiana-Nevada Transit Company (LNT), 16415 Addison Road, Suite 610, Dallas, Texas 75248–2661 77002, filed an application with the Commission in Docket No. CP98–263–000 pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon its pipeline facilities in Arkansas and Louisiana by sale to Arkla, a division of NorAm Energy Corp. (Arkla), all as more fully set forth in the application on file with the Commission and open to public inspection.

LNT proposes to abandon approximately 78 miles of 8-inch diameter pipe between Cotton Valley, Webster Parish, Louisiana, and Okay, Hampstead County, Arkansas, and approximately 17 miles of 6-inch diameter pipe that extends from Haynesville, Claiborne Parish, Louisiana, to an interconnection with the 8-inch diameter pipe in Webster Parish. LBT states that Arkla would buy the pipeline facilities for $226,500. LNT also states that Arkla is LNT's sole jurisdictional customer and that LNT also makes certain nonjurisdictional direct sales in Arkansas and Louisiana.

LNT states that it has filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code. LNT also states that Arkla would concurrently file a petition for a declaratory order that the facilities it would acquire from LNT would not be subject to the Commission's jurisdiction. LNT further states that Arkla would blind-plate the pipeline facilities at the Arkansas-Louisiana state line and operate the separated segments as reconfigured parts of Arkla's local distribution systems in Arkansas and Louisiana.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 23, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (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 NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for LNT to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6928 Filed 3–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–153–001]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 12, 1998.

Take notice that on March 9, 1998, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to be effective April 1, 1998:

Substitute Thirtieth Revised Sheet No. 5
Substitute Thirtieth Revised Sheet No. 6
Substitute Twenty-Seventh Revised Sheet No. 7

MRT states that the propose of this filing is to amend its March 2, 1998 filing to correct surcharge column headings and to identify the GRI surcharge for the authorized overrun rate on the SCT and IT rate schedules.

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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6936 Filed 3–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–1384–000 and EL98–28–000]

PJM Interconnection, L.L.C.; Notice of Initiation of Proceeding and Refund Effective Date

March 12, 1998.

Take notice that on March 10, 1998, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL98–28–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL98–28–000 will be 60 days after publication of this notice in the Federal Register.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–6931 Filed 3–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–441–001, ER98–495–001, ER98–496–001 (consolidated)]

Southern California Edison Company, Pacific Gas & Electric Company and San Diego Gas & Electric Company; Notice of Informal Settlement Conference

March 12, 1998.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, March 18, 1998, at 10:00 A.M. The conference will be held at the offices of the Federal Energy Regulatory

Commission, 888 First Street, N.E., Washington, D.C.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), may attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission Regulations. See 18 CFR 385.214.

For additional information, please contact Paul B. Mohler at (202) 208–1240.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6930 Filed 3–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–28–000]

Stingray Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 12, 1998.

Take notice that on March 9, 1998, Stingray Pipeline Company (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 4, to be effective April 8, 1998.

Stingray states that the purpose of the filing is to update Stingray's system map to reflect the addition and deletion of laterals.

Stingray requested a waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective on April 8, 1998.

Stingray states that a copy of the filing has been mailed to Stingray's customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 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 proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6933 Filed 3–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–29–000]

Trailblazer Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 12, 1998.

Take notice that on March 9, 1998, Trailblazer Pipeline Company (Trailblazer) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 4, to be effective April 8, 1998.

Trailblazer states that the purpose of the filing is to update Trailblazer's system map to reflect a new compressor station and to modify the existing format to provide for greater clarity.

Trailblazer requested a waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective on April 8, 1998.

Trailblazer states that a copy of the filing has been mailed to Trailblazer's customers and interested 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, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6934 Filed 3–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–157–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 12, 1998.

Take notice that on March 9, 1998, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A attached to the filing, to be effective April 9, 1998.

Trunkline states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to provide a clarification to Trunkline's no notice service under Rate Schedules NNS–1 and NNS–2. These revised tariff sheets clarify when and who should pay the transportation charge for delivery of gas into storage in the event of a change in the furthest upstream primary point of receipt on the Designated Transportation Service Agreement and in-field storage transfers.

Trunkline states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protest 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 proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6935 Filed 3–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT 98–27–00]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

March 12, 1998.

Take notice that on March 6, 1998, Williams Gas Pipelines Central, Inc., formerly Williams Natural Gas Company (Williams), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1.

Williams states that Williams Natural Gas Company changed its name to Williams Gas Pipelines Central, Inc. effective January 12, 1998. The instant filing is being made to file a new Volume No. 1 tariff and make other miscellaneous changes.

Williams states that a copy of its filing was served on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6932 Filed 3–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–168–000]

Williams Natural Gas Company; Notice of Site Visit

March 12, 1998.

On March 30 and 31, 1998, the staff of the Office of Pipeline Regulation will be conducting an environmental site visit of Williams Natural Gas Company's Pampa Pipeline Abandonment Project. All parties may attend. Those planning to attend must provide their own transportation.

For further information about where the site inspection will begin, please contact Paul McKee at (202) 208–1088.

Robert J. Cupina,

Deputy Director, Office of Pipeline Regulation.

[FR Doc. 98–7018 Filed 3–17–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00236; FRL–5777–4]

Toxic Substances; Correction of Misreported Chemical Substances on the TSCA Inventory; Agency Information Collection Activities; Proposed Renewal and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) pursuant to the procedures described in 5 CFR 1320.12. Before submitting the following ICR to OMB for review and reapproval, EPA is soliciting comments on specific aspects of the information collection, which is briefly described below. The ICR is a continuing ICR entitled "Correction of Misreported Chemical Substances on the TSCA Inventory," EPA ICR No. 1741.02, OMB No. 2070-0145. This ICR covers the reporting of corrected information to the Toxic Substances Control Act (TSCA) section 8(b) Inventory of Chemical Substances, which relates to reporting requirements that appear at 40 CFR part 710. 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.

DATES: Written comments must be submitted on or before May 18, 1998.

ADDRESSES: Each comment must bear the docket control number "OPPTS–00236" and administrative record number 191. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G-099, East Tower, Washington, DC 20460. Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. Follow the instructions under Unit III. of this document. No TSCA Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this document. Persons submitting information any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: For general information contact: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–554–1404, TDD: 202–554–0551, e-mail: TSCA-Hotline@epamail.epa.gov. For technical information contact: Scott Sherlock, Information Management Division (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–260–1536; Fax: 202–260–1657; e-mail: sherlock.scott@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability:

Internet

Electronic copies of the ICR are available from the EPA Home Page at the Federal Register - Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

Fax-on-Demand

Using a faxphone call 202–401–0527 and select item 4058 for a copy of the ICR.

I. Background

Affected entities: Entities potentially affected by this action are persons who manufacture, process, or import chemical substances in the United States.

For the collection of information addressed in this notice, EPA would like to solicit comments to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

II. Information Collection

EPA is seeking comments on the following ICR, as well as the Agency's intention to renew the corresponding OMB approval, which is currently scheduled to expire on May 31, 1998.

Title: Correction of Misreported Chemical Substances on the TSCA Inventory.

ICR numbers: EPA ICR No. 1741.02, OMB No. 2070-0145.

Abstract: Section 8(b) of the TSCA requires EPA to compile and keep current an Inventory of Chemical Substances in Commerce, which is a listing of chemical substances manufactured, imported, and processed for commercial purposes in the United States. The purpose of the Inventory is to define, for the purpose of TSCA, what chemical substances exist in U.S. commerce. Since the Inventory thereby performs a regulatory function by distinguishing between existing chemicals and new chemicals, which TSCA regulates in different ways, it is imperative that the Inventory be accurate.

However, from time to time, EPA or respondents discover that substances have been incorrectly described by reporting companies. Reported substances have been unintentionally misidentified as a result of simple typographical errors, the misidentification of substances, or the lack of sufficient technical or analytical capabilities to characterize fully the exact chemical substances. EPA has developed guidelines (45 FR 50544, July 29, 1980) under which incorrectly described substances listed in the Inventory can be corrected.

This information collection request pertains to the use of the TSCA Chemical Substance Inventory Reporting Form C (EPA Form 7710-3C), which is used by the chemical industry in submitting requests to EPA to correct misreported chemical identities of substances listed on the Inventory. The correction mechanism ensures the accuracy of the Inventory without imposing an unreasonable burden on the chemical industry. Without the Inventory correction mechanism, a company that submitted incorrect information would have to file a premanufacture notification (PMN) under TSCA section 5 to place the correct chemical substance on the Inventory whenever the previously reported substance is found to be misidentified. This would impose a much greater burden on both EPA and the submitter than the existing correction mechanism.

Responses to this collection of information are voluntary.

Burden statement: The burden to respondents for complying with this ICR is estimated to total 200 hours per year with an annual cost of $8,100. These totals are based on an average burden of 1 hour per response for an estimated 200 respondents making one response annually. These estimates include the time needed to determine applicability; 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.

III. Public Record and Electronic Submissions

The official record for this document as well as the public version, has been established for this document under docket control number "OPPTS–00236" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm. NE-B607, 401 M St., SW., Washington, DC.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "OPPTS–00236" and administrative record number 191. Electronic comments on this document may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Information collection requests, Reporting and recordkeeping.

Dated: March 9, 1998.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 98–6978 Filed 3–17–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5980–3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Regulation of Fuels and Fuel Additives, Fuel Quality Regulations for Highway Diesel Fuel Sold in 1993 and Later Calendar Years

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Regulation of Fuels and Fuel Additives, Fuel Quality Regulations for Highway Diesel Fuel Sold in 1993 and Later Calendar Years; OMB No. 2060–0308; expires 03/31/98. The ICR describes the nature of the information collection and its expected burden and cost; and where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 17, 1998.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call Sandy Farmer at EPA, by phone at (202) 260–2740, by E-

Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at http://www.epa.gov/icr/icr.htm, and refer to EPA ICR No. 1718.02.

SUPPLEMENTARY INFORMATION:

Title: Regulation of Fuels and Fuel Additives, Fuel Quality Regulations for Highway Diesel Fuel Sold in 1993 and Later Calendar Years, (OMB Control No. 2060–0308; EPA ICR No. 1718.02.) expiring 3/31/98. This is a request for an extension (with revisions to burden estimates) of a currently approved collection.

Abstract: Section 211(i) of the Clean Air Act, 42 U.S.C. § 7545(i), requires EPA to implement and enforce regulations regarding the diesel fuel quality requirements of the Act. The Act specifically provides that EPA may require that diesel fuel not intended for use in motor vehicles contain dye to segregate it from motor vehicle (highway) diesel fuel. EPA regulations promulgated pursuant to the Act, at 40 CFR § 80.29, require that non-road diesel fuel contain visible evidence of red dye. The Internal Revenue Service (IRS) also requires that non-road diesel fuel contain red dye. The IRS further requires that low sulfur highway use diesel fuel sold to tax exempt organizations be dyed red. This latter IRS requirement resulted in the subject EPA recordkeeping requirement that transfers of dyed low sulfur (highway) diesel fuel to tax exempt entities be accompanied by customary business practice paperwork that includes a statement that the product meets EPA standards for highway use but that it is tax exempt fuel. The statement can be in brief code and it can be preprinted or automatically printed. The transferors and transferees of such fuel must keep the transfer documents for five years. There is no reporting requirement or periodic recordkeeping requirement. All responses are mandatory. EPA has authority to require this information under section 211 of the Act, 42 U.S.C. § 7545, section 114 of the Act, 42 U.S.C. § 7414 and section 208 of the Act, 42 U.S.C. § 7542.

Confidentiality of information obtained from parties is protected under 40 CFR Part 2.

The dye requirement and the associated recordkeeping requirement, which is limited to a relatively small quantity of diesel fuel, greatly assists EPA to enforce the highway diesel fuel requirements and also assists parties to determine if they are receiving or transferring appropriate product.

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. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 11/24/97 (62 FR 62592–62593); no comments were received and therefore the ICR supporting statement does not summarize comments or EPA's actions taken in response to comments. However, EPA did consult industry persons by telephone and all parties contacted indicated the paperwork requirement has virtually no measurable burden both because the message is automatically printed on customary business practice documents and because the parties contacted all kept the documents for at least 5 years by normal business practice.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.047 hours per year for highway diesel fuel terminals; there is no measurable burden for other parties. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Terminals, distributors, and tax-exempt wholesale purchaser-consumers of highway diesel fuel.

Estimated Number of Respondents: 1,843 highway diesel fuel terminals; 1,000 truck distributors of tax exempt highway diesel fuel (with no measurable burden); and 10,000 tax exempt wholesale purchaser-consumers (with no measurable burden).

Frequency of Response: diesel fuel terminals: 170 transactions per year with paperwork required on the occasion of the transactions.

Estimated Total Annual Hour Burden: 87 hours.

Estimated Total Annualized Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1718.02. and OMB Control No. 2060–0308 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503

Dated: March 12, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–7008 Filed 3–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5980–4]

Federal Register Notice of Stakeholders Meeting on Chemical Monitoring Revisions and Alternative Monitoring Guidelines for Public Water Systems

AGENCY: Environmental Protection Agency.

ACTION: Announcement of stakeholders meetings.

SUMMARY: The U.S. Environmental Protection Agency (EPA) will hold a public meeting on April 16, 1998 in Washington, DC. The purpose of this meeting will be to collect opinions regarding the appropriate course of action to take with the Agency's effort to revise the monitoring requirements for certain chemicals in drinking water. On July 3, 1996, EPA issued an Advanced Notice of Proposed Rule Making (ANPRM) for Chemical Monitoring Reform (CMR) and Permanent Monitoring Relief (PMR). This ANPRM suggested regulatory changes in chemical monitoring requirements that EPA was considering in order to better focus monitoring on systems at risk of contamination and on the contaminants posing such risk. When finalized, the monitoring revisions were intended to meet Section 1445(a)(1)(D) of the Safe Drinking Water Act, which states that the Administrator shall, by August 6, 1998 "....after consultation with public health experts,

representatives of the general public, and officials of State and local governments, review the monitoring requirements for not fewer than twelve contaminants identified by the Administrator, and promulgate any necessary modifications." The regulatory changes suggested in the ANPRM covered 64 chronic contaminants including inorganic chemicals (IOCs), synthetic organic chemicals (SOCs) and volatile organic chemicals (VOCs).

The monitoring changes suggested in the ANPRM were developed, in part, considering the occurrence data that were available at that time. Recognizing that this data was limited, we solicited additional data that could be used in developing the proposed rule. In response to this solicitation and as part of additional information gathering, EPA received a tremendous amount of new occurrence data. The Agency has completed a preliminary assessment of some of the data and intends to present these findings to stakeholders in order to gather opinions from interested stakeholders on whether EPA should proceed with its suggested revisions as presented in the ANPRM, or consider other approaches and modifications. We will consider the comments and views expressed in developing the proposed regulation, and encourage the full participation of all stakeholders throughout this process.

DATES: The stakeholder meeting regarding Chemical Monitoring Reform and Permanent Monitoring Relief will be held on:

1. April 16, 1998, 9:30 a.m. to 3:30 p.m. EST in Washington, DC.

ADDRESSES: To register for the meeting, please contact the EPA Safe Drinking Water Hotline at 1–800–426–4791, or Ed Thomas of EPA's Office of Ground Water and Drinking Water at (202) 260–0910. Interested parties who cannot attend the meeting in person may participate via conference call and should register with the Safe Drinking Water Hotline. Conference lines will be allocated on the basis of first-reserved, first served.

The stakeholder meeting will be held at the following location:

1. Washington Information Center, 401 M Street, S.W., Room 17, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For general information on meeting logistics, please contact the Safe Drinking Water Hotline at 1–800–426–4791. For information on the activities related to this rulemaking, contact: Ed Thomas, U.S. EPA at (202) 260–0910 or E-mail to thomas.edwin@epamail.epa.gov.

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency.

[FR Doc. 98–7009 Filed 3–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34120; FRL 5775–5]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on September 14, 1998.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier, delivery, telephone number and e-mail: Rm. 216, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA, provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 22 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before September 14, 1998 to discuss withdrawal of the applications for amendment. This 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion. (Note: Registration number(s) preceded by ** indicate a 30–day comment period).

TABLE 1—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000100–00597	Dual 8E Herbicide	Metolachlor	Use on stone fruits, tree use on stone fruits, tree nuts, grapes (nonbearing) and citrus
000100–00673	Dual Herbicide	Metolachlor	Use on stone fruits, tree nuts, grapes (nonbearing) and citrus
000100–00710	Bicep II Herbicide	Atrazine; Metolachlor	Roadside uses
000264–00518	Weedone Lo Vol 6	Acetic acid, (2,4-dichlorophenoxy)-2-ethylhexyl ester	Sugarcane & drainage ditchbank uses
**000352–00361	Du Pont Methomyl Composition	Methomyl	Greenhouse food crop uses
**000352–00366	Du Pont Methomyl Technical	Methomyl	Greenhouse food crop uses
000432–00541	Bioallethrin	*d-trans*-Allethrin	All feed/food uses
000432–00587	Crossfire Technical	*d-trans*-Allethrin	All feed/food uses

TABLE 1—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000432–00750	Bioallethrin Technical	*d-trans*-Allethrin	All feed/food uses
000432–00751	Esbiol	*s*-Bioallethrin	All feed/food uses
000432–00752	Esbiothrin Technical	*d-trans*-Allethrin	All feed/food uses
000655–00788	Prentox Carbaryl 5D	Carbaryl	Uses for ticks & fleas on dogs and cats
000655–00789	Prextox Carbaryl 10D	Carbaryl	Uses for ticks & fleas on dogs and cats
**000862–00011	Sunspray 6E	Petroleum Oil	Herbaceous flowers & foliage plants
005905–00505	Weed Rhap LV–4D	Acetic acid, (2,4-dichlorophenoxy)-, 2-ethylhexyl ester	Sugarcane, drainage ditchbanks, aquatic non-food uses
**011678–00005	Thionex Endosulfan Technical	Endosulfan	Alfalfa (grown for forage), artichokes, field corn, watercress, peas (seed crop only), soybeans, sugarbeets, safflower, sunflower
**011678–00025	Thionex Endosulfan 35 EC	Endosulfan	Alfalfa (grown for forage), artichokes, field cord, watercress, peas (seed crop only), soybeans, sugarbeets, safflower, sunflower
**019713–00099	Drexel Endosulfan 2EC	Endosulfan	Artichokes, field corn, watercress, barley, oats, rye, wheat, peas (seed crop only), soybeans, bean (cannery residue), sugarbeets, safflower, sunflower, alfalfa (grown for forage)
**019713–00319	Velsicol Endosulfan Technical	Endosulfan	Artichokes, field corn, watercress, barley, oats, rye, wheat, peas (seed crop only), soybeans, bean (cannery residue), sugarbeets, safflower, sunflower, alfalfa (grown for forage)
048273–00003	Ametryne 80W	Ametryn	Citrus, potato use
**062719–00088	Dursban ME20 Microen-capsulated Insecticide	Chlorpyrifos	Termiticide uses
**066222–00002	Thionex Endosulfan 50 WP Insecticide	Endosulfan	Alfalfa (grown for forage), artichokes, field corn, watercress, peas (seed crop only),

(Note: Registration number (s) preceded by ** indicate a 30–day comment period)

The following Table 2, includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000100	Novartis Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419.
000264	Rhone-Poulenc Ag Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709.
000352	DuPont Ag Products, Registration & Regulatory Affairs, Walker's Mill, Barley Mill Plaza, Wilmington, DE 19880.
000432	AgrEvo Environmental Health, 95 Chestnut Ridge Road, Montvale, NJ 07645.
000655	Prentiss Incorporated, C.B. 2000, Floral Park, NY 11002.
000862	Sun Company, P.O. Box 1135, Marcus Hook, PA 19061.
005905	Helena Chemical Co., 6075 Poplar Ave., Suite 500, Memphis, TN 38119.
011678	Makhteshim - Agan of North America, 551 Fifth Ave., Suite 1100, New York, NY 10176.
019713	Drexel Chemical Co., P.O. Box 13327, Memphis, TN 38113.
048273	RegWest Co., P.O. Box 2220, Greeley, CO 80632.
062719	DowElanco, 9330 Zionsville Road, Indianapolis, IN 46268.
066222	Makhteshim - Agan of North America, 551 Fifth Ave., Suite 1100, New York, NY 10176.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations

Dated: March 4, 1998.

Linda A. Travers,

Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 98–6692 Filed 3–17–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34123; FRL 5779–8]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on March 19, 1998.

FOR FURTHER INFORMATION CONTACT: By mail: Margery M. Exton, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier, delivery, telephone number and e-mail: Rm. 216, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 308–9399; e-mail: exton.margery@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in six technical grade chlorpyrifos pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Although the food use sites being deleted have been registered sites for chlorpyrifos products, tolerances have not been established for these commodities under the Federal Food, Drug, and Cosmetic Act (FFDCA).

Therefore, under FIFRA section 2(bb), these uses represent an unreasonable adverse effect on the environment, as they would result in human dietary risk from residues resulting from use of a pesticide in or on food inconsistent with the standard under section 408 of FFDCA. As such, the Agency is hereby waiving the 180–day comment period normally given for the deletion of a minor use, in accordance with FIFRA section 6(f)(1)(c). The Agency has determined that, while these actions require publication for the purpose of announcement, a comment period is not warranted.

The remaining use deletions (non-food sites) announced in this Notice will retain a 30–day comment period. Users of these products who desire continued use on sites being deleted should contact the applicable registrant before April 17, 1998 to discuss withdrawal of the applications for amendment. This 30–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
062719–00015	Dursban® F Insecticidal Chemical	Chlorpyrifos	Use on popcorn and carrot (including seed)
062719–00044	Dursban® R Insecticidal Chemical	Chlorpyrifos	Use on popcorn and carrot (including seed)
011678–00045	Pyrinex Chlorpyrifos Insecticide	Chlorpyrifos	Use on popcorn and carrot (including seed)
011678–00054	Pyrinex Chlorpyrifos Insecticide	Chlorpyrifos	Use on popcorn; PEST CONTROL INDOORS (Indoor): Indoor broadcast use; total release foggers for indoor residential and non-residential (except greenhouse) use; coating products intended for large surface areas such as floors, walls, and ceilings inside residential dwellings, offices, schools, or health care institutions including, but not limited to, houses, apartments,nursing homes and patient rooms in hospitals. PETS AND DOMESTIC ANIMALS (Indoor): Animals dips, sprays, shampoos, dusts; AQUATIC USES (AQUATIC FOOD CROP) (AQUATIC, NON-FOOD): Any aquatic use, including mosquito larvicide; PEST CONTROL INDOORS OR OUTDOORS (DOMESTIC INDOOR OR OUTDOOR): Paint additives.
070907–00001	Gharda Chlorpyrifos Technical	Chlorpyrifos	Use on popcorn and as a paint additive.
004787–00027	Chlorpyrifos Technical	Chlorpyrifos	Use on popcorn

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
062719	DowElanco, 9330 Zionsville Road, Indianapolis, IN 46268.
011678	Makhteshim - Agan of North America, 551 Fifth Ave., Suite 1100, New York, NY 10176.
070907	Gharda USA, Inc., P.O. Box 5068, Brookfield, CT 06804
004787	Cheminova Agro A/S 1700 Route 23, Suite 210 Wayne, New Jersey 07470

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 90 days after the effective date of use deletions. This determination was based in part on the voluntary agreement of these registrants to cease selling product bearing previously approved labeling within that time period.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: March 13, 1998.

Richard D. Schmidt,

Acting Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 98–6970 Filed 3–17–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66249; FRL 5775–6]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by September 14, 1998, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier, delivery, telephone number and e-mail: Rm. 216, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 103 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000000 WA–95–0043	Thiram 65	Tetramethyl thiuramdisulfide
000070–00228	Home Pest Insect Killer	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
000100–00747	Dual Df Herbicide	2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylphenyl)acetamide (9Cl)
000100 AZ–96–0002	Ridomil 2E Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000264 AZ–87–0021	Ethrel Plant Regulator	(2-Chloroethyl)phosphonic acid
000264 CT–97–0002	Aliette/Maneb 2+2 Fungicide	Aluminum tris(*O*-ethylphosphonate)
000279 AZ–93–0001	Dragnet FT Termiticide	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
000279 AZ–93–0010	Talstar 10WP Insecticide/Miticide	(2-Methyl(1,1'-biphenyl)-3-yl)methyl 3-(2-chloro-3,3,3-trifluoro-1-
000279 AZ–96–0005	Talstar 10WP Insecticide/Miticide	(2-Methyl(1,1'-biphenyl)-3-yl)methyl 3-(2-chloro-3,3,3-trifluoro-1-
000303–00218	Firing Squad Liquid Residual	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
		(5-Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate
000334–00568	Mash Ant & Roach Crawling Insect Killer	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
000352 CA–78–0215	Vydate L Insecticide/Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-, methyl ester

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
000352 CA–80–0063	Vydate L Oxamyl Insecticide/Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-, methyl ester
000352 CA–82–0027	Vydate L Insecticide/Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-, methyl ester
000352 CA–82–0068	Vydate L Insecticide/Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-, methyl ester
000352 CA–90–0052	Vydate L Insecticide/Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-, methyl ester
000352 HI–82–0001	Vydate L Insecticide/Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-, methyl ester
000352 MT–89–0006	Vydate L Insecticide/Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-, methyl ester
000352 NM–81–0021	Vydate L Oxamyl Insecticide/Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-, methyl ester
000352 NM–92–0002	Du Pont "Vydate" L Insecticide/Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-, methyl ester
000352 PA–80–0039	Vydate L Oxamyl Insecticide/Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-, methyl ester
000352 PA–95–0003	Du Pont "Vydate" L Insecticide/Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-, methyl ester
000352 TX–86–0001	Vydate L Insecticide/Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-, methyl ester
000352 VA–94–0006	Du Pont "Vydate" L Insecticide/Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-, methyl ester
000421–00021	Glyco Mist	Isopropanol
		1,2-Propanediol
		Diisobutylphenoxyethoxyethyl dimethyl benzyl ammonium chloride
		Triethylene glycol
000432–00510	SBP-1382 Technical-RF Refined Grade	(5-Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate
000432–00520	SBP-1382 Technical 90 RF	(5-Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate
000432–00521	SBP-1382 Technical 96 PR	(5-Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate
000499–00360	P/P Residual Ant + Roach Spray No. 3	2-Methyl-4-oxo-3-(2-propenyl)-2-cyclopenten-1-yl 2,2-dimethyl-3-(2-
		O,O-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
001182–00021	Pine Odor Sanamax P6	Isopropanol
		Pine oil
		Alkyl* dimethyl benzyl ammonium chloride *(58%C_{14}, 28%C_{16}, 14%C_{12})
001719–00041	BLP Weather Protector Exterior Wood Stain Preservative	3-Iodo-2-propynyl butylcarbamate
001719–00042	BLP Weather Protector Transparent Penetrating Sealer &	3-Iodo-2-propynyl butylcarbamate
001812 LA–93–0013	Direx 4l, Diuron Flowable Herbicide	3-(3,4-Dichlorophenyl)-1,1-dimethylurea
001812 OR–94–0040	Direx 4l, Diuron Flowable Herbicide	3-(3,4-Dichlorophenyl)-1,1-dimethylurea
001839–00170	Skasol Jet White Toilet Bowl Cleaner	Hydrogen chloride (hydrochloric acid, anhydrous)
		Alkyl* dimethyl benzyl ammonium chloride *(60%C_{14}, 30%C_{16}, 5%C_{18}, 5%C_{12})
		Alkyl* dimethyl ethylbenzyl ammonium chloride *(50%C_{12}, 30%C_{14}, 17%C_{16}, 3%C_{18})
001839–00171	Warrior 240 Concentrated Toilet Bowl Cleaner	Hydrogen chloride (hydrochloric acid, anhydrous)
		Alkyl* dimethyl benzyl ammonium chloride *(50%C_{14}, 40%C_{12}, 10%C_{16})
		Didecyl dimethyl ammonium chloride
		Octyl decyl dimethyl ammonium chloride

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
		Dioctyl dimethyl ammonium chloride
001839–00172	Scout 16 Porcelain Tile and Bowl Cleaner	Alkyl* dimethyl benzyl ammonium chloride *(50%C_{14}, 40%C_{12}, 10%C_{16})
		Didecyl dimethyl ammonium chloride
		Octyl decyl dimethyl ammonium chloride
		Dioctyl dimethyl ammonium chloride
		Phosphoric acid
002393 KS–97–0001	Hopkins Zinc Phosphide Pellets	Zinc phosphide (Zn3P2)
002393 MO–96–0014	Hopkins Zinc Phosphide Pellets	Zinc phosphide (Zn3P2)
002935 TX–93–0019	Dimethogon 267 EC	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
004313–00003	Thrifty Pine Pine Odor Disinfectant Five	2-Benzyl-4-chlorophenol
		Potassium 2-benzyl-4-chlorophenate
		Pine oil
004758–00159	Hill's Holiday Flea Stop Dip for Dogs	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
007969–00165	Gowan Pacific Mepiquat Chloride	*N,N*-Dimethylpiperidinium chloride
008429–00008	Cairox Potassium Permanganate Technical Grade	Potassium permanganate
008429–00010	Cairox Potassium Permanganate USP Grade	Potassium permanganate
010163–00186	Gowan Mepiquat Chloride 4.2 Liquid	*N,N*-Dimethylpiperidinium chloride
010163 AZ–94–0011	Gowan Diazinon 50 WSB	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
010182–00135	Dyfonate II 20-Granular Insecticide	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
010182–00180	Dyfonate II 10-G Granular Insecticide	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
010182–00187	Dyfonate II 15-G Granular Insecticide	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
010182–00195	Dyfonate Tillam 1-4E Insecticide	*S*-Propyl butylethylthiocarbamate
		O-Ethyl *S*-phenyl ethylphosphonodithioate
010182–00208	Dyfonate 2-G Granular Ornamental Turf Insecticide	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
010182–00209	Dyfonate 5-G (Alt. Crusade 5-G)	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
010182–00212	Dyfonate 4-EC	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
010182–00268	Dyfonate Technical	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
010182 ID–94–0003	Dyfonate II 15-G Granular Insecticide	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
010182 LA–93–0009	Dyfonate 4-EC	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
010182 LA–93–0010	Dyfonate II 15-G Granular Insecticide	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
010182 NV–93–0005	Gramoxene Extra	1,1'-Dimethyl-4,4'-bipyridinium dichloride
		1,1'-Dimethyl-4,4'-bipyridinium dichloride
		6,7-Dihydrodipyrido(1,2-a: 2',1'-c)pyrazinediium dibromide
010182 WA–94–0012	Dayfonate 11 15-G Granular Insecticide	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
010445–00061	H-303 WB Microbiocide	Methylenebis(thiocyanate)
010707–00039	Magnacide H Plus	2-Propenal
011715–00137	Force One Automatic Fogger	*N*-Octyl bicycloheptene dicarboximide
		O,O-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
011715–00282	Farnam Repel-XV Emulsifiable Fly Spray	Pine oil
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
		2,2-Dichlorovinyl dimethyl phosphate
011715–00283	Farnam Wipe V	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
		2,2-Dichlorovinyl dimethyl phosphate
019713–00204	Chapman Weed-Free Bcb-8p	Sodium metaborate ($NaBO_2$)
		5-Bromo-3-sec-butyl-6-methyluracil
		Sodium chlorate
031910–00016	Aquatreat DNM-25E	Disodium ethylenebis(dithiocarbamate)
		Sodium dimethyldithiocarbamate
034704–00052	Clean Crop Bromacil Weed Killer	5-Bromo-3-sec-butyl-6-methyluracil, lithium salt
034704 CT–94–0001	Clean Crop Curbit EC Herbicide	Benzenamine, *N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)-
034704 ME–91–0001	Tenax	O-Ethyl S-phenyl ethylphosphonodithioate
		O,O-Diethyl *S*-((ethylthio)methyl) phosphorodithioate
034704 NC–91–0006	Tenax	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
		O,O-Diethyl *S*-((ethylthio)methyl) phosphorodithioate
034704 OR–88–0002	Rampart 10-G Soil and Systemic Insecticide	*O,O*-Diethyl *S*-((ethylthio)methyl) phosphorodithioate
034704 OR–91–0008	Clean Crop Curbit EC Herbicide	Benzenamine, *N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)-
034704 OR–91–0029	Dimethoate 2.67 EC	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
034704 OR–92–0018	Clean Crop Methyl Parathion 4-E	*O,O*-Dimethyl *O*-*p*-nitrophenyl phosphorothioate
034704 OR–92–0025	Tenax	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
		O,O-Diethyl *S*-((ethylthio)methyl) phosphorodithioate
034704 OR–96–0008	Clean Crop Dimethoate 400	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
034704 WA–91–0007	Tenax	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
		O,O-Diethyl *S*-((ethylthio)methyl) phosphorodithioate
034704 WA–93–0010	Rampart 10-G Soil and Systemic Insecticide	*O,O*-Diethyl *S*-((ethylthio)methyl) phosphorodithioate
038635–00005	L-47 Algae Control	2-(Thiocyanomethylthio)benzothiazole
		Methylenebis(thiocyanate)
042050–00009	Quick Kill V	5-Bromo-3-sec-butyl-6-methyluracil, lithium salt
049428–00001	RWC B-2 D-2g Semi Soil Sterilant	5-Bromo-3-sec-butyl-6-methyluracil
		3-(3,4-Dichlorophenyl)-1,1-dimethylurea
057908 AL–92–0002	Dyfonate 4-EC	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
057908 HI–92–0008	Gramoxone Extra Herbicide	1,1'-Dimethyl-4,4'-bipyridinium dichloride
057908 NC–91–0015	Dyfonate 4-EC	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
057908 NJ–90–0005	Gramoxone Extra Herbicide	1,1'-Dimethyl-4,4'-bipyridinium dichloride
057908 OR–93–0004	Dyfonate 4-EC	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
057908 SC–82–0027	Dyfonate 4-EC	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
		Aliphatic petroleum hydrocarbons
057908 WA–91–0045	Gramoxone Extra Herbicide	1,1'-Dimethyl-4,4'-bipyridinium dichloride
057908 WA–92–0046	Dyfonate 4-EC	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
060061–00008	Wolman Treat OO Concentrate	Copper naphthenate
060061–00021	Woodtreat WB	3-Iodo-2-propynyl butylcarbamate
060061–00026	Copper Treat 00 Concentrate Copper Naphthenate Preservative	Copper naphthenate
062719–00206	Dursban WB05 II	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
062719 NC–97–0003	Recruit AG	Benzamide, *N*-(((3,5-dichloro-4-(1,1,2,2-tetrafluoroethoxy)phenyl)
064864–00021	Uniflow Sulfur	Sulfur
065730–00001	Shingle Shield	Zinc
066222–00013	Triflurex (Trifluralin) 4EC	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N*,*N*-dipropyl-p-toluidine) (Note: α = alpha)
066764–00001	FC-33	Boric acid

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
067591 OR–96–0042	Clean Crop Trifluralin 4EC	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N*,*N*-dipropyl-p-toluidine) (Note: α = alpha)

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period. The following Table 2, includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000070	SureCo Inc., An Indirect Subsidiary of Ringer Corporation, 9555 James Ave South, Suite 200, Bloomington, MN 55431.
000100	Novartis Crop Protection, Inc., Box 18300, Greensboro, NC 27419.
000264	Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27709.
000279	FMC Corp. Agricultural Products Group, 1735 Market St, Philadelphia, PA 19103.
000303	Huntington Professional Products, A Service of Ecolab, Inc., 370 N. Wabasha Street, St Paul, MN 55102.
000334	Hysan, A Division of Specialty Chemical Resources, 9055 Freeway Drive, Macedonia, OH 44056.
000352	E. I. Du Pont De Nemours & Co, Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000421	James Varley & Sons, Inc., 1200 Switzer Ave, St Louis, MO 63147.
000432	AgrEvo Environmental Health, 95 Chestnut Ridge Rd, Montvale, NJ 07645.
000499	Whitmire Micro-Gen Research Laboratories Inc., 3568 Tree Ct., Industrial Blvd, St Louis, MO 63122.
001182	Hubman Products, 720 S Three B's & K Rd., Galena, OH 43021.
001719	Mobile Paint Mfg. Co. Inc., Box 717–Theodore Inds. Park Hamilton Rd, Theodore, AL 36582.
001812	Griffin Corp., Box 1847, Valdosta, GA 31603.
001839	Stepan Co., 22 W. Frontage Rd., Northfield, IL 60093.
002393	HACO, Inc., Box 7190, Madison, WI 53707.
002935	Wilbur Ellis Co., 191 W Shaw Ave, #107, Fresno, CA 93704.
004313	Carroll Co., 2900 W. Kingsley Rd., Garland, TX 75041.
004758	Pet Chemicals, 4242 Bf Goodrich Blvd Box 18993, Memphis, TN 38181.
007969	BASF Corp., Agricultural Products, Box 13528, Research Triangle Park, NC 27709.
008429	Carus Chemical Co Inc., Division of Carus Corp., 315 5th Street, Peru, IL 61354.
010163	Gowan Co, Box 5569, Yuma, AZ 85366.
010182	Zeneca Ag Products, Box 15458, Wilmington, DE 19850.
010445	Calgon Corp., Calgon Center - Box 1346, Pittsburgh, PA 15230.
010707	Baker Petrolite Corp., Box 27714, Houston, TX 77227.
011715	Speer Products Inc., Box 18993, Memphis, TN 38181.
019713	Adams Technology Systems, Agent For: Drexel Chemical Co, 5145 Forest Run Trace - Suite B, Alpharetta, GA 30202.
031910	Alco Chemical Division, National Starch & Chemical Co., 909 Mueller Drive Box 5401, Chattanooga, TN 37406.
034704	Cherie Garner, Agent For: Platte Chemical Co Inc., Box 667, Greeley, CO 80632.
038635	Rite Industries, Inc., 1124 Elon Place Box 1747, High Point, NC 27261.
042050	J & B Industries, 2100 J & B Dr., San Benito, TX 78586.
049428	RWC, Inc., 6210 Frost Rd., Westerville, OH 43081.
057908	Metam Sodium Task Force, c/o Stauffer Chemical Co., 1200 South 47th St, Richmond, CA 94804.
060061	Kop-Coat, Inc., 436 Seventh Ave., Pittsburgh, PA 15219.
062719	Dow Agrosciences LLC, 9330 Zionsville Rd 308/3e, Indianapolis, IN 46268.
064864	Pace International, L.P., Box 558, Kirkland, WA 98083.
065730	Chicago Metallic, 6750 Santa Barbara Ct, Baltimore, MD 21227.
066222	Makhteshim-Agan of North America Inc., 551 Fifth Ave., Ste 1100, New York, NY 10176.
066764	Flea Control Systems, 23510 Telo Ave #6, Torrance, CA 90505.
067591	Nufarm Platte Pty Ltd, 1009-D W. St. Maartens Drive, St. Joseph, MO 64506.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before September 14, 1998. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** (56 FR 29362) June 26, 1991; [FRL 3846–4]. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: March 4, 1998.

Linda A. Travers,

Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 98–6691 Filed 3–17–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00517; FRL–5761–6]

Minor Changes to Product Properties Test Guidelines; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA has established a unified library for test guidelines issued by the Office of Prevention, Pesticides and Toxic Substances (OPPTS) and is announcing minor changes to the Series 830—Product Properties Test Guidelines. The availability of final guidelines in this series was announced in the **Federal Register** on August 28, 1996 (61 FR 44308)(FRL–5390–7). The Agency periodically announces in the **Federal Register** the availability of new and changed test guidelines.

ADDRESSES: The guidelines are available from the U.S. Government Printing Office (GPO), Washington, DC 20402 on *The Federal Bulletin Board*. By modem dial (202) 512–1387, telnet and ftp: fedbbs.access.gpo.gov (IP 162.140.64.19), or call (202) 512–0132 for disks or paper copies. The guidelines are also available electronically in ASCII and PDF (portable document format) from the EPA's World Wide Web site (http://www.epa.gov/epahome/research.htm) under the heading "Researchers and Scientists/Test Methods and Guidelines/OPPTS Harmonized Test Guidelines."

FOR FURTHER INFORMATION CONTACT: For general information: By mail:

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) information: Contact the Communications Services Branch (7506C), Field and External Affairs Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone number: (703) 305–5017; fax: (703) 305–5558.

Toxic Substances Control Act (TSCA) information: Contact the TSCA Hotline at: TATS/7408, Environmental Protection Agency, 401 M St.,SW, Washington, DC 20460. Telephone number: (202) 554–1404; fax: (202) 554–5603, e-mail: TSCA-hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA's Office of Prevention, Pesticides and Toxic Substances is announcing minor changes to the following Series 830 test guidelines. These changes are editorial in nature and do not amend the existing requirements under FIFRA or the TSCA section 4 test rules. Explicit test requirements for registration are set out in 40 CFR parts 158 and 796 and the test guidelines contain standards for and examples of acceptable testing.

1. OPPTS 830.1000 Background for Product Properties Test Guidelines. Paragraph (e)(2)(x) addressing solubility data requirements has been revised to provide additional clarity on requirements for solubility in organic solvents data.

2. OPPTS 830.7200 Melting Point/Melting Range. The address for obtaining documents from the Collaborative International Pesticides Analytical Council (CIPAC) has been changed to that of the current publisher.

3. OPPTS 830.7300 Density/Relative Density/Bulk Density. The address for obtaining documents from the Collaborative International Pesticides Analytical Council (CIPAC) has been changed to that of the current publisher.

4. OPPTS 830.7840 Water Solubility, Column Elution Method; Shake Flask Method. A new paragraph (b)(3)(iv) has been inserted to address the requirement for organic solvents solubility data.

5. OPPTS 830.7860 Water Solubility, Generator Column Method. A new paragraph (b)(1)(iv) has been inserted to address the requirement for organic solvents solubility data.

The final guidelines issued in the **Federal Register** of August 28, 1996, and the revised guidelines containing these minor changes will be available from the GPO *Federal Bulletin Board* and EPA's World Wide Web site.

List of Subjects

Environmental Protection, Test guidelines.

Dated: March 10, 1998.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 98–6875 Filed 3–17–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 12, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 18, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0360.

Title: Section 80.409(c), Public coast station logs.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit, individuals or households, non-profit institutions, state, local or tribal governments.

Number of Respondents: 316.

Estimated Time Per Response: 95 hours.

Total Annual Burden: 30,020 hours.

Frequency of Response: Recordkeeping requirement, on occasion reporting requirement.

Estimated Cost Per Respondent: $0.

Needs and Uses: The recordkeeping requirement contained in this rule section is necessary to document the operation and public correspondence service of public coast radio telegraph, public coast radiotelephone stations and Alaska-public fixed stations, including the logging of distress and safety calls where applicable. A retention period of more than one year is required where a log involves communications relating to a disaster, an investigation, or any claim or complaint. If the information were not collected, documentation concerning the above stations would not be available.

OMB Approval Number: 3060–0364.

Title: Section 80.409(d) and (e), Ship radiotelegraph logs, ship radiotelephone logs.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit, not-for-profit institutions, state, local or tribal governments.

Number of Respondents: 10,950.

Estimated Time Per Response: 47.3 hours.

Total Annual Burden: 517,935 hours.

Frequency of Response: Recordkeeping requirement, on occasion reporting requirement.

Estimated Cost Per Respondent: $0.

Needs and Uses: The recordkeeping requirement contained in these rule sections is necessary to document that compulsory radio equipped vessels and high seas vessels maintain listening watches and logs as required by statutes and treaties (including treaty requirements contained in appendix 11 of the International Radio Regulations, Chapter IV, Regulation 19 of the International Convention for the Safety of Life at Sea, the Bridge-to-Bridge Radio Telephone Act, the Great Lakes Agreement, and the Communications Act of 1934, as amended.) A retention period of more than one year is required where a log involves communications relating to a disaster, an investigation, or any claim or complaint. If the information were not collected, documentation concerning station operations would not be available and treaty requirements would not be complied with.

OMB Approval Number: 3060–0357.

Title: Section 63.701, Request for Designation as a Recognized Private Operating Agency.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 30.

Estimated Time Per Response: 5 hours.

Total Annual Burden: 150 hours.

Frequency of Response: On occasion reporting requirement.

Estimated Cost Per Respondent: $0.

Needs and Uses: The Commission requests this collection of information to gather the information needed to recommend to the United States Department of Sate whether or not to designate persons requesting it recognized private operating agency (RPOA) status. The United States does not require anyone to obtain RPOA status but has created a voluntary process by which companies who believe it would be helpful in persuading foreign telecommunications operators to deal with them can obtain such a designation. RPOA status also permits companies to join the Telecommunications Sector of the International Telecommunications Union Formal (ITU), the standards-setting body of the ITU. Formal recognition of RPOA status is required by the ITU for companies desiring the ITU to grant them international free phone numbers.

Without this information the government cannot represent to other nations that the United States enhanced-service providers will obey international regulations.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–7035 Filed 3–17–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARTIME COMMISSION

Ocean Freight Forwarded License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders,

Federal Maritime Commission, Washington, D.C. 20573.

Worldwide Forwarding Company, 3846 Ingraham St., #402, Los Angeles, CA 90005, David Chun, Sole Proprietor

Dependable Auto Shippers Inc. of Texas, 9208 Forney Road, Dallas, TX 75227, Officer: Frederick A. London, President

AIMAR USA, INC., 8437 N.W. 72nd Street, Miami, FL 33166, Officers: Goffredo R. Holbik, President, Pablo Miguel Olaya, Vice President

Dated: March 13, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–6965 Filed 3–17–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 10, 1998.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Portage Banc Shares, Inc., Ravenna, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Portage Community Bank, Ravenna, Ohio, a *de novo* bank.

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. Security Bank Holding Company, Coos Bay, Oregon; to acquire 100 percent of the voting shares of Family Security Bank, Brookings, Oregon (in organization).

Board of Governors of the Federal Reserve System, March 12, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–6914 Filed 3–17–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 11:00 a.m., Monday, March 23, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed leasing of space within the Federal Reserve System.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 13, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–7060 Filed 3–13–98; 4:19 pm]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Minority Health; Availability of Funds for Grants for the Bilingual/Bicultural Service Demonstration Grant Program

AGENCY: Office of the Secretary, Office of Public Health and Science, Office of Minority Health.

ACTION: Correction.

SUMMARY: On March 2, 1998 (63 FR 10226), OMH published a notice announcing the Availability of Funds for Grants for the Bilingual/Bicultural Service Demonstration Grant Program. This notice corrects the application receipt date which appeared in that notice, FR Doc. 98–5233, on page 10227. Under the Deadline Section in the second column, it stated that "grant applications must be received by the OMH Grants Management Office 60 days after date of publication or by April 13, 1998." This is corrected to read "grant applications must be received by the OMH Grants Management Office by May 1, 1998."

Dated: March 12, 1998.

Clay E. Simpson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 98–6980 Filed 3–17–98; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0147]

Agency Information Collection Activities: Proposed Collection; Survey of Mammography Facilities; Comment Request

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 a voluntary survey of mammography facilities to assess the impact of the Mammography Quality Standards Act (the MQSA) on access to mammography services.

DATES: Submit written comments on the collection of information by May 18, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Margaret R. 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 an existing 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 listed below.

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.

Access to Mammography Services Survey—New

Under the MQSA (42 U.S.C. 2636), FDA is authorized to develop regulations, inspect facilities, and ensure compliance with standards established to assure quality mammography services for all women. In the legislative history of the MQSA, Congress expressed the need to balance quality improvements with impact on access to mammography services. The General Accounting Office has recently done an assessment and concluded that access has been minimally affected. However, new regulations will become effective April 28, 1999 and October 28, 2002.

The Mammography Facility Survey will provide FDA with important information about the impact of specific aspects of the MQSA program on access to mammography services. The survey will provide facility closure rates both pre- and post-implementation of the final regulations. Furthermore, the Survey will determine reasons for facility closures, including those related to specific MQSA regulations and those that are attributable to general operational challenges. Finally, the Survey will also gather information from operating facilities to determine the impact of MQSA regulations on facilities that continue to provide mammography services. Participation will be voluntary. A total of 120 facilities that have ceased to provide mammography services will be given the opportunity to take part in a 15-minute telephone survey. These facilities will be matched by zipcode to 480 open mammography centers to provide up to four controls for each closed facility . Each of the open facilities will also be offered the opportunity to participate in the study until we have two matched controls. The Survey will collect demographic information from each survey respondent, and then ask questions that address the perceived impact on the facility's ability to provide mammography services of factors related to specific MQSA regulations, as well as factors not directly associated with MQSA requirements. Additional descriptive information about the facilities will be abstracted from various FDA data bases in order to enhance the level of detail that is known about each respondent.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
720	1	720	0.25	180

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 8, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–6906 Filed 3–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0148]

International Drug Scheduling; Convention on Psychotropic Substances; Dihydroetorphine; Ephedrine; Remifentanil; Isomers of Psychotropic Substances

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting interested persons to submit data or comments concerning abuse potential, actual abuse, medical usefulness, and trafficking of three drug substances. This information will be considered in preparing a response from the United States to the World Health Organization (WHO) regarding abuse liability, actual abuse, and trafficking of these drugs. WHO will use this information to consider whether to recommend that certain international restrictions be placed on these drugs. This notice requesting information is required by the Controlled Substances Act (CSA).

DATES: Submit written comments by April 17, 1998.

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

FOR FURTHER INFORMATION CONTACT: Nicholas P. Reuter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1696, E–mail: NReuter@bangate.FDA.gov.

SUPPLEMENTARY INFORMATION: The United States is a party to the 1971 Convention on Psychotropic Substances. Article 2 of the Convention on Psychotropic Substances provides that if a party to that convention or WHO has information about a substance, which in its opinion may require international control or change in such control, it shall so notify the Secretary General of the United Nations and provide the Secretary General with information in support of its opinion.

The CSA (21 U.S.C. 811 *et seq.*) (Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970) provides that when WHO notifies the United States under Article 2 of the Convention on Psychotropic Substances that it has information that may justify adding a drug or other substance to one of the schedules of that convention, transferring a drug or substance from one schedule to another, or deleting it from the schedules, the Secretary of State must transmit the notice to the Secretary of Health and Human Services (the Secretary of HHS). The Secretary of HHS must then publish the notice in the **Federal Register** and provide opportunity for interested persons to submit comments to assist HHS in preparing scientific and medical evaluations about the drug or substance. The Secretary of HHS received the following notices from WHO:

I. WHO Notification

Ref. : C. L.23 .1997

WHO questionnaire for collection of information for review of dependence-producing psychoactive substances

The Director-General of the World Health Organization presents his compliments and has the pleasure of informing Member States that the Thirty-first Expert Committee on Drug Dependence will meet from 23 to 26 June 1998 to review the following substances:

1. Dihydroetorphine
2. Ephedrine
3. Remifentanil
4. With regard to all substances in Schedules I and II of the Convention on Psychotropic Substances, 1971:

(a) their isomers, except where expressly excluded, whenever the existence of such isomers is possible;

(b) their esters and ethers, except where included in another schedule, whenever the existence of such esters and ethers is possible;

(c) salts of those esters, ethers and isomers, under the conditions stated above, whenever the formation of such salts is possible;

(d) a substance resulting from modification of the chemical structure of a substance already in these schedules and which produces pharmacological effects similar to those produced by the original substance.

One of the essential elements of the established review procedure is for the Secretariat to collect relevant information from Member States to prepare a Critical Review document for submission to the Expert Committee on Drug Dependence. The Director-General invites Member States to collaborate, as in the past, in this process by providing all pertinent information mentioned in the attached questionnaire[1] concerning the substances mentioned in items 1 to 3 above. The questionnaire does not include any questions about the groups of substances specified under item 4, since the required information is already being sought by the Secretary-General of the United Nations in his Circular Letter NAR/CL.4/1997.

Further clarification on any of the above items can be obtained from Psychotropic and Narcotic Drugs (PND), Division of Drug Management and Policies, WHO, Geneva, to which replies should be sent not later than *1 March 1998.*

GENEVA, 30 December 1997

Questionnaire for data collection for use by the World Health Organization and the Commission on Narcotic Drugs of the Economic and Social Council

Substance reported on:

1. Availability of the substance (registered, marketed, dispensed, etc.).
2. Extent of abuse of the substance.
3. Degree of seriousness of the public health and social problems[2] associated with abuse of the substance.
4. Number of seizures of the substance in the illicit traffic during the previous three years and the quantities involved.
5. Identification of the seized substance as of local or foreign manufacture and indication of any commercial markings.
6. Existence of clandestine laboratories manufacturing the substance.

II. United Nations Notifications

The U.S. Government has received two notifications from the Secretary General of the United Nations. The first notification (NAR/CL./1997, signed May 28, 1997), transmits under to Article 2, paragraph 1 of the Convention on Psychotropic Substances, 1971, a request from the Government of Spain to amend Schedules I and II of the Convention to include:

"(a) isomers, except where expressly excluded, of substances listed in those Schedules, whenever the existence of such isomers is possible;

"(b) esters and ethers of substances in those Schedules, except where included in another Schedule, whenever the existence of such esters or ethers is possible;

"(c) salts of those esters, ethers and isomers, under the conditions stated above, whenever the formation of such salts is possible;

"(d) a substance resulting from modification of the chemical structure of a substance already in Schedule I or Schedule II and which produces pharmacological effects similar to those produced by the original substance."

The May 28, 1997, notification included as annexes, the original request from the Government of Spain, along with a questionnaire. A subsequent notification from the United

[1] For Ministries of Health only.

[2] Examples of public health and social problems are acute intoxication, accidents, work absenteeism, mortality, behaviour problems, criminality, etc.

Nations Secretary General dated February 23, 1998 (NAR/CL.2/1998), identified additional issues to be considered within the context of the Government of Spain's request.

These notifications appear to relate to the amendment of the Convention and not to the addition of specific substances to the schedules of the Convention (See 21 U.S.C. 811 (d)). Therefore, they are not published in this notice. The notifications are on display and copies may be obtained by contacting Nicholas Reuter (address above). Comments submitted in response to the United Nations notifications will be forwarded to the WHO through the United Nations Secretariat.

III. Background

None of the three substances under consideration by WHO are controlled internationally. Dihydroetorphine is a hydrogenated derivative of etorphine and a potent μ-opioid-receptor agonist used as a short-acting analgesic in China. It is neither marketed nor controlled in the United States.

Ephedrine is available in the United States as an over-the-counter bronchodilator. Further, ephedrine has been designated as a listed chemical and is subject to chemical diversion regulations under 21 CFR part 1310 which are enforced by the Drug Enforcement Administration. According to WHO, information is now available to indicate that illicit trafficking in ephedrine has increased significantly in recent years. Further, although the substance is illicitly used primarily in the manufacture of stimulants, WHO has evidence to indicate the increasing abuse of ephedrine preparations in some countries.

Remifentanil is a selective μ-opioid-receptor agonist of the fentanyl group. Remifentanil is approved in the United States as an anesthetic for use in animals and is controlled domestically as a narcotic in schedule II of the CSA.

IV. Opportunity to Submit Domestic Information

As required by section 201(d)(2)(A) of the Controlled Substances Act (21 U.S.C. 811(c)(2)(A)). FDA on behalf of the Department of Health and Human Services (DHHS) invites interested persons to submit data or comments regarding the eight named drugs. Data and information received in response to this notice will be used to prepare scientific and medical information on these drugs, with a particular focus on each drug's abuse liability. DHHS will forward that information to WHO, through the Secretary of State, for WHO's consideration in deciding whether to recommend international control of any of these drugs. Such control could limit, among other things, the manufacture and distribution (import/export) of these drugs, and could impose certain recordkeeping requirements on them.

DHHS will not now make any recommendations to WHO regarding whether any of these drugs should be subjected to international controls. Instead, DHHS will defer such consideration until WHO has made official recommendations to the Commission on Narcotic Drugs, which are expected to be made in late 1998 or early 1999. Any DHHS position regarding international control of these drugs will be preceded by another **Federal Register** notice soliciting public comment as required by 21 U.S.C. 811(d)(2)(B).

V. Comments

Interested persons may, on or before April 17, 1998, submit to the Docket Management Branch (address above) written comments regarding this action. This abbreviated acceptance period is necessary to allow sufficient time to prepare and submit the domestic information package by the deadline imposed by WHO. Although WHO has requested comments and information by March 1, 1998, WHO will accept and consider material transmitted after the March date. Respondents should submit material in the format set forth by the WHO Questionnaire reprinted previously.

Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m, Monday through Friday.

This notice contains information collection requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB). The requirements were approved and assigned OMB control number 0910–0226.

Dated: March 8, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–6910 Filed 3–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96D–0067]

Draft Guidance for Industry on Clinical Development Programs for Drugs, Devices, and Biological Products for the Treatment of Rheumatoid Arthritis (RA); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Clinical Development Programs for Drugs, Devices, and Biological Products for the Treatment of Rheumatoid Arthritis (RA)." This draft guidance is intended to assist developers of drugs, biological products, or medical devices intended for the treatment of rheumatoid arthritis (RA). It provides guidance on the types of claims that could be considered for such products and on clinical evaluation programs that could support those claims. The draft guidance also contains recommendations on the timing, design, and conduct of preclinical and clinical trials for RA products and on special considerations for juvenile RA. The agency is seeking comments on the draft guidance.

DATES: Written comments may be submitted on the draft guidance document by April 17, 1998. General comments on the agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance are available on the Internet at http://www.fda.gov/cder/guidance/index.htm and at http://www.fda.gov/cber/guidelines.htm.

Submit written comments on the draft guidance to the Dockets Management Branch (HFD–305), Food and Drug Administration, 12420 Parklawn Dr., rm 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rose E. Cunningham, Center for Drug Evaluation and Research (HFD–006), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5468.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled "Clinical Development Programs for Drugs, Devices, and Biological Products for the Treatment of Rheumatoid Arthritis (RA)." The draft guidance also contains recommendations on the timing, design, and conduct of preclinical and clinical

trials for RA products and on special considerations for juvenile RA.

This draft guidance has been under development since 1995. The first version of the draft guidance was completed in March 1996. An additional section on juvenile RA was added in May of that year. A second version was completed in January 1997. Two public workshops have been held on the topic: One was held on March 27, 1996 (61 FR 8961, March 6, 1996), and the other was held on July 23, 1996 (61 FR 32447, June 24, 1996). On February 5, 1997 (62 FR 4535, January 30, 1997), the draft guidance was discussed at a meeting of the Arthritis Advisory Committee. This draft guidance is the result of those efforts.

The draft guidance represents the agency's current thinking on rheumatoid arthritis. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Written requests for single copies of the draft guidance for industry should be submitted to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Interested persons may submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments and requests are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 8, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–6908 Filed 3–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–3000–N]

Medicare Program; Solicitation of Proposals for a Demonstration Project for the Use of Informatics, Telemedicine, and Education in the Treatment of Diabetes Melitus in the Rural and Inner-City Medicare Populations

AGENCY: Health Care Financing Administration (HCFA).

ACTION: Notice.

SUMMARY: This notice announces our intent to solicit proposals from eligible health care telemedicine networks for a demonstration project to use high capacity computing and advanced networks for the improvement of primary care and prevention of health care complications for Medicare beneficiaries with diabetes mellitus, who are residents of medically underserved rural areas or medically underserved inner city areas. We are soliciting these proposals under the authority of section 4207 of the Balanced Budget Act of 1997, section 1875 of the Social Security Act, and sections 402(a)(1)(B) and (a)(2) of the Social Security Amendments of 1967.

This notice also describes the requirements for submitting proposals and applications for this demonstration project.

DATES: For consideration, letters of intent must be received by April 17, 1998 and mailed to the following address: Lawrence E. Kucken, Health Care Financing Administration, Office of Health Standards and Quality, Mailstop C3–24–07, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online data base through GPO Access, a service of the U.S. Government Printing Office. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the data base by using the World Wide Web (the Superintendent of Document's home page address is http://www.access.gpo.gov/su_docs/), by using local WAIS client software, or by telnet to swais.access.gpo.gov, then log in as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then log in as guest (no password required).

FOR FURTHER INFORMATION CONTACT: Lawrence E. Kucken, (410) 786–6694

SUPPLEMENTARY INFORMATION:

I. Background

A. Diabetes Mellitus in the Medicare Population

Diabetes is one of the most prevalent and costly diseases in the Medicare population. The National Health Interview Survey reported a prevalence of 10.4 percent in individuals aged 65 and older, based on the American Diabetes Association (ADA) diagnostic criteria of fasting blood glucose greater than 140. Medical costs for patients with diabetes are two to five times higher than costs for patients without diabetes. Cardiovascular disease, stroke, renal disease, and amputation occur more frequently in the elderly patient with diabetes than in those without diabetes.

A significant percentage of the morbidity associated with diabetes can be reduced or delayed in the Medicare population by appropriate diagnosis, preventive strategies, and management. Appropriate foot care, eye examinations and treatment of retinopathy, and other interventions on the part of the health care team, and involvement of the patient in his or her own self-care, such as intense blood glucose monitoring for patients on insulin have been shown to significantly reduce poor outcomes associated with diabetes.

B. Current HCFA Initiatives in Medicare Diabetes Treatment

We have undertaken several major initiatives aimed at improving quality of life, decreasing morbidity and mortality, and providing the most appropriate, cost-effective care for Medicare beneficiaries with diabetes. Peer Review Organizations in each State have been charged with identification of quality of care issues in their State and

development of partnerships with hospitals and physicians to improve care for persons with diabetes. Projects are underway in all 50 states and the District of Columbia. In addition, we have coordinated and financed a partnership among key users and developers of performance measurement techniques to identify components of quality care for persons with diabetes and to develop a set of performance measures to assess and improve the care provided to these individuals across all health care settings.

C. Development of the Telemedicine Network Demonstration

In October 1996, we initiated a 3-year, rural outreach demonstration of Medicare payment for telemedicine services. The demonstration focuses primarily on medical consultations between a primary care physician with a patient located at a remote rural site (spoke) and a medical specialist (consultant) located at a medical center facility (hub). Through this demonstration, we are addressing concerns that certain populations, primarily persons in rural or inner-city areas, have limited access to health care specialists, and that recent advances in telecommunications technology can provide low cost access to medical specialists.

The demonstration is designed to examine alternative payment methods, including separate payments to providers at each end of the telecommunication network, as well as a single "bundled payment" to cover services of both providers. Provider payments are based on predetermined amounts associated with CPT–4 evaluation and management codes contained in the Medicare physician fee schedule. In the case of the bundled payment option scheduled to begin during the third year of the demonstration, sites will determine the relative payment amounts received by the consulting specialists and the referring primary care physicians. Coincident with the implementation of the bundled payment approach, we will negotiate with demonstration participants to develop a telemedicine facility fee structure based on telemedicine cost centers and billing data accumulated during the demonstration. These negotiations will recognize the principle of efficient provider pricing, reflecting the optimal use of telemedicine resources and prudent buying.

Through this demonstration, we will obtain information about the utilization and costs of telemedicine services, as well as the general characteristics and practice patterns of individual telemedicine programs. Ultimately, the demonstration should provide insight and information to help us determine whether telemedicine coverage is warranted and, if so, how to implement cost-effective Medicare coverage.

II. Provisions of This Notice

A. Purpose

The purpose of this demonstration is to determine and evaluate the advantage of informatics and telemedicine for improving access to needed services, reducing the cost of such services, and improving the quality of life for affected Medicare beneficiaries. In this notice, "medical informatics" means the storage, retrieval, and use of biomedical and related information for problemsolving and decisionmaking through computing and communications technologies, and "telemedicine" means the use of telecommunications technologies for diagnostic, monitoring and medical education purposes.

We are soliciting innovative proposals that will use medical informatics, including telemedicine, to improve primary care for Medicare beneficiaries who live in medically underserved rural and inner-city areas and who suffer from diabetes. Proposals should describe existing protocols for the application or demonstration of telecommunications or informatics, that, at a minimum, have been pilot-tested by the applicant, thus precluding the need for long developmental timeframes.

Those protocols that have been developed for the general population must be modified, as necessary, to meet the special needs of the Medicare elderly, disabled, and end-stage renal disease populations, and should be replicable for the general Medicare underserved population. They should address developmental issues through descriptions of end products, for example, a curriculum to train health care professionals, and related strategies and workplans. They should also contain available cost effectiveness data related to the described protocols and developmental components.

Proposals must specifically address the following issues:

- The application of telecommunications for the purpose of providing Medicare beneficiaries diagnosed with diabetes, access to, and compliance with, appropriate care guidelines;
- The development of a curriculum to train health care professionals in the use of medical informatics and telecommunications;
- The demonstration of the application of advanced technologies, such as video-conferencing from a patient's home, remote monitoring of a patient's medical condition, interventional informatics, and the application of individualized, automated care guidelines, to assist primary care providers in assisting patients with diabetes in a home setting;
- The application of medical informatics to residents with limited English language skills;
- The development of standards in the application of telemedicine and medical informatics; and
- The development of a model for the cost effective delivery of primary and related care both in a managed care and fee-for-service environment.

B. Minimal Qualifications of Health Care Providers

We are interested in proposals from eligible health care provider telemedicine networks. An eligible health care provider network must be a consortium that is comprised of:

- At least one tertiary care hospital, but no more than 2 such hospitals;
- At least one medical school;
- No more than four facilities in rural or urban areas; and
- At least one regional telecommunications provider.

The consortium must be located in an area with a high concentration of medical schools and tertiary care facilities in the United States and have appropriate arrangements (within or outside the consortium) with such schools and facilities, universities, and telecommunications providers, in order to conduct the project. We interpret "minimal concentration" as an area with at least three medical schools and three tertiary care facilities, physically located within a recognized area, such as a Standard Metropolitan Statistical Area, county or city. Additionally, eligible applicants must guarantee that they will be responsible for payment of all costs of the project that are not paid by Federal funds and that the maximum amount of Federal funds to be made to the consortium shall not exceed the limitation specified below under "payment provisions."

C. Payment Provisions

Under this demonstration, services related to the treatment or management of (including prevention of complications from) diabetes for Medicare beneficiaries furnished under the project shall be considered to be services covered under Part B of Title XVIII of the Social Security Act. Subject to the limitations described below,

payment for these services will be made at a rate of 50 percent of the costs that are reasonable and necessary and related to the provision of such services.

Costs that may be included under these payments are as follows:

- Acquisition of telemedicine equipment for use in patients' homes (but only for patients located in medically undeserved areas);
- Curriculum development and training of health professionals in medical informatics and telemedicine;
- Payment of telecommunications costs (including salaries and maintenance of equipment), including telecommunications between patients' homes and the eligible network and between the network and other entities in the consortium; and
- Payments to practitioners and providers under the Medicare programs.

The following costs are not covered or payable under this demonstration:

- The purchase or installation of transmission equipment (other than such used by health professionals to deliver medical informatics services under the project);
- The establishment or operation of a telecommunications common carrier network; or
- The establishment, acquisition, or building of real property, except for minor renovations related to the installation of reimbursable equipment costs.

D. Limitation

The total amount of payments that may be made for this project will not exceed $30,000,000 for the 4-year period of the demonstration.

E. Limitation on Cost Sharing

The project may not impose cost sharing on a Medicare beneficiary for the receipt of services under the project in excess of 20 percent of the costs that are reasonable and related to the provision of such services.

F. Evaluation

Proposals submitted for this demonstration must contain provisions for an independent evaluation of the cost effectiveness of the services provided. The evaluation must be performed by an independent contractor competitively chosen according to bidding procedures approved by the our project officer. Proposals should address the elements to be incorporated into a request for proposal (RFP) to be used in the procurement of an evaluation contractor.

G. Length of Demonstration

This demonstration project will cover a period of 4 years.

III. Application Procedures

The application procedure is two-step process involving submission of letters of intent and formal proposals.

A. Step 1—Letters of Intent

A potential applicant is required to submit letters of intent containing brief descriptions of the applicant's ability to meet each of the provisions of this notice, including the following specific items:

- Protocols and plans related to the purpose of the project (Section II);
- Work plans describing the methods to be used in completing the project within the prescribed period of performance; minimal organizational characteristics and location requirements (Section II. B); and cost and payment guarantees (Section II. C);
- Descriptions of the use of Federal funds received under the project and the source and amount of non-Federal funds used in the project (Sections II. D and E);
- An evaluation strategy and design (Section II. F); and
- Length of the demonstration (Section II. G).

In addition, letters of intent should indicate acceptance of the payment provisions set forth in this notice, should not exceed six single spaced pages in length (including attachments), and must be signed by an appropriate official of the proposing entity.

For consideration, letters of intent must be received within 30 days from the publication of this notice and mailed to the following address: Lawrence E. Kucken, Mailstop C3–24–07, Health Care Financing Administration, Office of Health Standards and Quality, 7500 Security Boulevard, Baltimore, Maryland 21244–1850

Letters of intent will be screened against criteria based on provisions of this notice and period of performance requirements. Application kits, in turn, will be sent promptly to applicants whose letters of intent meet each these criteria.

B. Step 2—Formal Proposals

Detailed instructions for the preparation of formal proposals will be contained in application kits and will address criteria for screening proposals, evaluation criteria and associated weights, and procedural considerations. We may consider verbal presentations in lieu of written proposals. In addition, application kits will contain guidelines to be used by the applicant for preparation of the demonstration proposal cost estimate. This cost estimate will be used by the OMB in the final approval of Medicare waiver status for the project.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

AUTHORITY: Sec. 1875 of the Social Security Act (42 U.S.C. 139511); sections 402(a)(1)(B) and (a)(2) of the Social Security Amendments of 1967, as amended (42 U.S.C. 1395b–1(a)(1)(B) and (a)(2)); and Section 4207(a), (b), (c), and (d) of the Balanced Budget Act of 1997 (P.L. 105–33) (Catalog of Federal Domestic Assistance Program No 93.779 Health Financing Demonstrations, and Experiments)

Dated: February 25, 1998.

Nancy Ann-Min DeParle,

Administrator, Health Care Financing Administration.

Dated: March 10, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–6940 Filed 3–17–98; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Warren Grant Magnuson Clinical Center; Submission for OMB review; Comment Request; Customer and Other Partners Satisfaction Surveys

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for the opportunity for public comment on the proposed data collection projects, the Warren Grant Magnuson Clinical Center (CC), the National Institutes of Health, (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on (Volume 62, Number 79, page 20012) and allowed 60 days for public comments. No public comments were received. The purpose of this notice is to provide an additional 30 days for public comment.

5 CFR 1320.5

Respondents to this request for information collection should not respond unless the request displays a currently valid OMB control number.

Proposed Collection

Title: Customer and Other Partners Satisfaction Surveys. *Type of Information Collection Request:* New request. *Need and Use of Information Collection:* The information collected in

these surveys will be used by Clinical Center personnel: (1) To evaluate the satisfaction of various Clinical Center customers and other partners with Clinical Center services; (2) to assist with the design of modifications of these services, based on customer input; (3) to develop new services, based on customer need; and (4) to evaluate the satisfaction of various Clinical Center customers and other partners with implemented service modifications. These surveys will almost certainly lead to quality improvement activities that will enhance and/or streamline the Clinical Center's operations. The major mechanisms by which the Clinical Center will request customer input is through surveys and focus groups. The surveys will be tailored specifically to each class of customer and to that class of customer's needs. Surveys will either be collected as written documents, as faxed documents, mailed electronically or collected by telephone from customers. Information gathered from these surveys of Clinical Center customers and other partners will be presented to, and used directly by, Clinical Center management to enhance the services and operations of our organization. *Frequency of Response:* The participants will respond yearly. *Affected public:* Individuals and households; businesses and other for profit, small businesses and organizations. *Types of respondents:* These surveys are designed to assess the satisfaction of the Clinical Center's major internal and external customers with the services provided. These customers include, but are not limited to, the following groups of individuals: Clinical Center patients, family members of Clinical Center patients, visitors to the Clinical Center, National Institutes of Health investigators, NIH intramural collaborators, private physicians or organizations who refer patients to the Clinical Center, volunteers, vendors and collaborating commercial enterprises, small businesses, regulators, and other organizations. The annual reporting burden is as follows:

TABLE 1.—BURDEN ESTIMATE

Customer	Type of survey	Estimated number to be surveyed	Expected response rate (percent)	Time to complete survey (minutes)	Estimated burden hours
Clinical Center Patients	Questionnaire/Telephone	11,100	66	20	2,436.6
Family Members of Patients	Questionnaire/Post-Card	8,500	38	10	533.3
Visitors to the Clinical Center	Questionnaire/Post-Card	3,500	15	10	87.5
Former physician employees and trainees.	Electronic	650	35	10	38.2
Guest workers/Guest researchers	Electronic	950	60	22	210
Extramural collaborators	Electronic	600	30	15	45
Vendors and Collaborating Commercial Enterprises.	Questionnaire/Fax-Back	9,500	17	18	475
Professionals and Organizations Referring Patients.	Fax Back	9,000	30	28	1,250
Regulators	Fax Back	85	82	19	22
Volunteers	Questionnaire	850	58	28	230
Total			n = 16,812		5,327.6

Estimated costs to the respondents consists of their time; time is estimated using a rate of $10.00 per hour for patients and the public; $30.00 for vendors, regulators, organizations and $55.00 for health care professionals. The estimated annual costs to respondents for each year for which the generic clearance is requested is $72,894 for 1998, $30,276 to 1999, and $24,531 for 2000. There are no capital costs, operating costs and/or maintenance costs to report.

Requests for comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Clinical Center and the agency, including whether the information shall have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the proposed information collections contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention Desk Officer for NIH.

FOR FURTHER INFORMATION: To request more information on the proposed project, or to obtain a copy of the data collection plans and instruments, contact: Dr. David K. Henderson, Deputy Director for Clinical Care, Warren G. Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C 146, 9000 Rockville Pike, Bethesda, Maryland 20892, or call non-toll free: (301) 496–3515, or e-mail your request or comments, including your address to: dhenderson@cc.nih.gov.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before April 17, 1998.

Dated: March 12, 1998.

David K. Henderson,

Deputy Director for Clinical Care, CC.

[FR Doc. 98–7031 Filed 3–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Research on Minority Health; Notice of Meeting

Pursuant to Pub. L. 92–463, as amended, notice is hereby given of the first meeting of the Advisory Committee on Research on Minority Health on April 3, 1998, National Institutes of Health Conference Center, Building 31, Conference Room 9, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public from 9:00 a.m. to 12:00 p.m. on April 3. Attendance by the public will be limited to space available. The Committee will review and assess minority health activities, including those to be undertaken by the national research institutes, with respect to research related to minority health; the inclusion of members of minority groups as subjects in clinical research; and the enhancement of minority participation in research and research training programs. Additional agenda items include: (1) introduction of new members; (2) presentation by Dr. John Ruffin on the mission of ORMH; and (3) other business of the Committee.

In accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C. and section 10(d) of the Federal Advisory Committee Act, as amended, the meeting will be closed to the public from 1:00 p.m. to adjournment for discussions of individual programs and projects including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Jean Flagg-Newton, Special Assistant to the Associate Director, ORMH, Building 1, Room 255, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301–402–2518, will provide a summary of the meeting and a roster of Committee members as well as substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Flagg-Newton no later than March 25.

Dated: March 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–6957 Filed 3–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

Name of Committee: National Human Genome Institute Initial Review Group, Ethical, Legal, and Social Implications Subcommittee.

Agenda/Purpose: To review and evaluate grant applications and/or contract proposals.

Date: April 1, 1998.

Time: 3:00 to 5:00 p.m.

Place: Via Telconference, Building 38A, Room 609, at the National Institutes of Health, Bethesda, MD.

Contact Person: Rudy Pozzatti, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Building 38A, Room 604, Bethesda, Maryland 20892, (301) 402–0838.

The meeting will be closed in accordance with the provisions set forth in secs. 552(b)(4) and 552(c)(6), Title 5 U.S.C. The applications and/or contract propsals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalogue of Federal Domestic Assistance Program No. 93,172, Human Genome Research)

Dated: March 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–6954 Filed 3–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: NIAMS Special Grants Review Committee.

Date: April 14, 1998.

Time: 8:30 a.m.-adjournment.

Place: Holiday Inn, Georgetown, 2101 Wisconsin Avenue, Washington, D.C. 2007.

Contact Person: Tommy Broadwater, Ph.D., Chief, Grants Review Branch, Natcher Building, 45 Center Drive, Rm 5AS25U, Bethesda, Maryland 20892, Telephone: 301–594–4952.

Purpose/Agenda: To evaluate and review research grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.846, Project Grants in Arthritis, Musculoskeletal and Skin Diseases Research], National Institutes of Health, HHS)

Dated: March 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–6955 Filed 3–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institutes of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel (SEP) meeting.

Name of SEP: Clinical Trial (TELECONFERENCE).

Date: April 4, 1998.

Time: 4:00 p.m. (ET)—adjournment.

Place: National Institutes of Health, Natcher Building, Room 5AS25U, Bethesda, Maryland 20852.

Contact Person: Tommy Broadwater, Ph.D., Chief, Grants Review Branch, Natcher Building, Room 5AS25U, Bethesda, Maryland 20892, Telephone: 301–594–4952.

Purpose/Agenda: To evaluate and review a grant application.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of this application could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with this application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.846, Project Grants in Arthritis, Musculoskeletal and Skin Diseases Research], National Institutes of Health, HHS)

Dated: March 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–6956 Filed 3–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Purusant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name of SEP: ZDK1 GRB–8 M3 M.

Date: April 7, 1998.

Time: 2:00 PM.

Place: Room 6AS–25N, Natcher Building, NIH (Telephone Conference Call).

Contact: Roberta J. Haber, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–25N, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8898.

Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: March 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–6958 Filed 3–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting, Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke, Division of Intramural Research on May 10–12, 1998, at the National Institutes of Health, Building 31, Conference Room 6C6, 31 Center Drive, Bethesda, Maryland 20892.

This meeting will be open to the public from 8:00 a.m. to 12:00 p.m. and from 1:00 p.m. to 5:00 p.m. on May 11th, to discuss program planning and program accomplishments. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 8:00 p.m. to 10:00 p.m. on May 10th, and from 10:30 a.m. until adjournment on May 12th, for the review, discussion and evaluation of individual programs and projects conducted by the NINDS. The programs and discussions include consideration of personnel qualifications and performances, the competence of individual investigators and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Freedom of Information Coordinator, Ms. Kathleen Howe, Federal Building, Room 1012, 7550 Wisconsin Avenue, Bethesda, MD 20892, telephone (301) 496–9231 or the Executive Secretary, Dr. Story Landis, Director, Division of Intramural Research, NINDS, Building 36, Room 5A05, National Institutes of Health, Bethesda, MD 20892, telephone (301) 435–2232, will furnish a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research)

Dated: March 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–6959 Filed 3–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke, Division of Extramural Activities; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel (Telephone Conference Call).

Date: March 26, 1998.

Time: 11:00 a.m.

Place: National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892.

Contact Person: Dr. Katherine Woodbury-Harris, Mr. Phillip Wiethorn, Scientific Review Administrators, NINDS, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.

Purpose/Agenda: To review and evaluate Phase I SBIR Contract Proposal(s).

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel. (Telephone Conference Call).

Date: April 10, 1998.

Time: 12:00 p.m.

Place: National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892.

Contact Person: Dr. Paul A. Sheehy, Scientific Review Administrator, NINDS, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.

Purpose/Agenda: To review and evaluate a grant application.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: March 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–6960 Filed 3–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Warren Grant Magnuson Clinical Center; Notice of Meeting of the Executive Committee of the Board of Governors of the Warren Grant Magnuson Clinical Center

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Executive Committee of the Board of Governors of the Warren Grant Magnuson Clinical Center, March 23, 1998. The Executive Committee will meet from 9 a.m. to approximately 12

noon in the Medical Board Room (2C116) of the Clinical Center (Building 10), 9000 Rockville Pike, Bethesda, Maryland.

The meeting will be entirely open to the public and will include updates on organizational planning and budget issues.

Attendance by the public will be limited to space available.

For further information, contact Ms. Maggie Stakem, Office of the Director, Warren Grant Magnuson Clinical Center, Building 10, Room 2C146, Bethesda, Maryland 20892, (301) 496–4114.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Stakem in advance of the meeting.

This notice is being published less than fifteen days prior to this meeting due to scheduling conflicts.

Dated: March 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–6961 Filed 3–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–03]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* April 17, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 11, 1998.

David S. Cristy,

Director, IRM Policy, and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Assessment and Analysis of Multifamily Building's Conformity with Fair Housing Guidelines Provisions.

Office: Policy Development and Research.

OMB Approval Number: 2528–xxxx.

Description of the Need for the Information and its Proposed Use: The Fair Housing Amendments Act of 1988 requires that the newly constructed multifamily dwelling covered under the Act, available for occupancy after March 13, 1991 be designed and constructed to be accessible to persons with disabilities. The purpose of this project is to assess the extent of conformity with the accessibility requirements and to examine reasons, and any explanations for different patterns of conformity/non-conformity.

Form Number: None.

Respondents: State, Local or Tribal Government, Business or Other For-Profit and Individuals or Households.

Frequency of Submission: One time Collection.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden Hours
New Collection	1544		1		.67		1036

Total Estimated Burden Hours: 1036.

Status: New Collection.

Contact: Alan Rothman, HUD, (202) 708–4370 x139, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 98–6913 Filed 3–17–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–04]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: April 17, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk

Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 12, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Outline Specifications.

Office: Public and Indian Housing.

OMB Approval Number: 2577–0012.

Description of the Need for the Information and Its Proposed Use: This form is prepared by architect employed by Public Housing Authorities (PHAs) or by Turnkey Developers' to establish quality and kind of materials and equipment to be incorporated into housing developments. The information is used by the PHA and HUD to determine that specified items comply with HUD standards and codes that are appropriate for the project.

Form Number: HUD–5087.

Respondents: State, Local or Tribal Governments and not-for-profit institutions.

Frequency of Submission: On occasion and recordkeeping

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–5087	240		3.4		3		2,448
Recordkeeping	816		1		.25		204

Total Estimated Burden Hours: 2,652.

Status: Reinstatement, without change of a previously approved collection for which approval has expired.

Contact: William Thorson, HUD, (202) 708–4703; Joseph R. Lackey, Jr., OMB, (202) 395–7316.

Dated: March 12, 1998.

[FR Doc. 98–7022 Filed 3–17–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–05]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* April 17, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 12, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Public Housing Agencies' Plan for Exception Request—Site-Based Waiting Lists.

Office: Public and Indian Housing.

OMB Approval Number: 2577–0214.

Description of the Need for the Information and its Proposed Use: PHAs

will prepare and submit a plan which requests exception to the established site-based waiting lists. HUD needs the information to assure statutory and regulatory compliance. The information will be used to approve the PHA's plan.

Form Number: None.

Respondents: State, Local or Tribal Government.

Frequency of Submission: One-time plan.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
52		1		72		3744

Total Estimated Burden Hours: 3744.

Status: Reinstatement, without change, of a previously approved collection for which approval has expired.

Contact: Steve Holmquist, HUD, (202) 708–0713 x4246, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: March 12, 1998.

[FR Doc. 98–7023 Filed 3–17–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–06]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* April 17, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 12, 1998.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Section 203(k) Rehabilitation Mortgage Insurance Underwriting Program.

Office: Housing.

OMB Approval Number: None.

Description of the Need for the Information and Its Proposed Use: This information collection involves an expanded information collection requirement for lenders that originate and service Section 203(k) mortgages. The purpose of the information collection is to help mitigate program abused and have more documentation for internal control.

Form Number: HUD–92700.

Respondents: Business or Other For-Profit, Not-For-Profit Institutions, and the Federal Government.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	18,000		7		1.28		161,850

Total Estimated Burden Hours: 161,850.

Status: New.

Contact: John W. Struchen, HUD, (202) 708–6396 x5626, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: March 12, 1998.

[FR Doc. 98–7024 Filed 3–17–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Alaska Region, Beaufort Sea Lease Sale 170

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Availability of the final environmental impact statement.

The Minerals Management Service (MMS) has prepared a final Environmental Impact Statement (EIS) relating to the proposed 1998 Outer Continental Shelf oil and gas lease sale in the Beaufort Sea. The proposed Beaufort Sea Sale 170 will offer for lease approximately 1.08 million acres. You

may obtain single copies of the final EIS from the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99503–4302, Attention: Public Information. You may request copies by telephone at (907) 271–6070; 1–800–764–2627; or via e-mail at akwebmaster@mms.gov.

Copies of the final EIS are also available for inspection in the following public libraries:

Alaska Resource Library, U.S. Department of the Interior, Anchorage, Alaska
Alaska State Library, Juneau, Alaska
Army Corps of Engineers Library, U.S. Department of Defense, Anchorage, Alaska
Elmer E. Rasmuson Library, 310 Tanana Drive, Fairbanks, Alaska
Fairbanks North Star Borough Public Library (Noel Wien Library), 1215 Cowles Street, Fairbanks, Alaska
George Francis Memorial Library, Kotzebue, Alaska
Kaveolook School Library, Kaktovik, Alaska
Kegoayah Kozga Public Library, Nome, Alaska
Nellie Weyiouanna Ilisaavik Library, Shishmaref, Alaska
North Slope Borough School District Library/Media Center, Barrow, Alaska
Northern Alaska Environmental Center Library, 218 Driveway, Fairbanks, Alaska
Nuiqsut Library, Nuiqsut, Alaska
Tikigaq Library, Point Hope, Alaska
University of Alaska, Anchorage Consortium Library, 3211 Providence Drive, Anchorage, Alaska
University of Alaska, Fairbanks Institute of Arctic Biology, 311 Irving Building, Fairbanks, Alaska
University of Alaska-Juneau Library, 11120 Glacier Highway, Juneau, Alaska

Dated: March 3, 1998.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 98–6975 Filed 3–17–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection requests for the titles described below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by April 17, 1998 in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of either information collection request, explanatory information and related forms, contact John A. Trelease at (202) 208–2783, or electronically to jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted two requests to OMB to renew its approval of the collections of information contained in: Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plans, 30 CFR Part 784; and the Abandoned Mine Land Problem Area Description Form, OSM 76. OSM is requesting a 3-year term of approval for each information collection activity.

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 these collections of information are 1029–0039 for Part 784, and 1029–0087 for the OSM 76 form.

As required under 5 CFR 1320.8(d), **Federal Register** notices soliciting comments on these collections of information was published on December 15, 1997 (62 FR 65713), for the OSM 76 form, and on December 19, 1997 (62 FR 66664), for Part 784. No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plans, 30 CFR 784.

OMB Control Number: 1029–0039.

Summary: Sections 507(b), 508(a) and 516(b) of Pub. L. 95–87 require underground coal mine permit applications to submit an operations and reclamation plan and establish performance standards for the mining operation. Information submitted is used by the regulatory authority to determine if the applicant can comply with the applicable performance and environmental standards required by the law.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: 130 underground coal mining permit applicants.

Total Annual Responses: 130.

Total Annual Burden Hours: 92,605.

Title: Abandoned Mine Land Problem Area Description Form, OSM 76.

OMB Control Number: 1029–0087.

Summary: This form will be used to update the Office of Surface Mining Reclamation and Enforcement's inventory of abandoned mine lands. From this inventory, the most serious problem areas are selected for reclamation through the apportionment of funds to States and Indian tribes.

Bureau Form Number: OSM 76.

Frequency of Collection: On occasion.

Description of Respondents: 26 State governments and Indian tribes.

Total Annual Responses: 1,800.

Total Annual Burden Hours: 4,000.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses. Please refer to the appropriate OMB control numbers in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210—SIB, Washington, DC 20240, or electronically to jtreleas@osmre.gov.

Dated: March 12, 1998.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 98–6967 Filed 3–17–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of information collection under review; Application for procurement quota for controlled substances.

Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 30, 1997 at 62 FR 67901, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comments until April 17, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regrading the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Office, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1101 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of the information collection:

1. *Type of Information Collection:* Extension of previously approved collection.

2. *Title of the Form/Collection:* Application for Procurement Quota for Controlled Substances.

3. *Agency form number:* DEA Form 250, if any, and the applicable component of the Department of Justice sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit.

Title 21, Section 1303.12, requires U.S. companies involved in the manufacture of dosage forms or into other substances of Schedule I or II controlled substances must apply on DEA Form 250 each year for assignment of their quota of a specific Schedule I or II controlled substance.

5. An estimate of the total estimated number of respondents and the amount of time estimated for an average respondent to respond: 531 respondents at 1 response per year at 1 hour per response.

6. An estimate of the total public burden (in hours) associated with the collection: 531 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: March 12, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–6962 Filed 3–17–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of information collection under review; Application for Permit to Import Controlled Substances for Domestic and/or Scientific Purposes pursuant to 21 U.S.C. 952.

Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 29, 1997 at 62FR67661, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comments until April 17, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Office, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of the information collection:

1. *Type of Information Collection:* Extension of previously approved collection.

2. *Title of the Form/Collection:* Application for Permit to Import Controlled Substances for Domestic

and/or Scientific Purposes pursuant to 21 U.S.C. 952.

3. *Agency form number:* DEA Form 357, if any, and the applicable component of the *Department of Justice sponsoring the collection:* Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit.

Title 21, Section 1312.11 of the Code of Federal Regulations promulgated under the Controlled Substances Import and Export Act, 21 U.S.C. 951, et seq., requires that any registrant who desires to import into the United States any Schedule I or II controlled substance, any Schedule III, IV or V narcotic controlled substance, or any specifically designated Schedule III non-narcotic controlled substance must have an import permit. In order to obtain the permit, an application for permit must be made to the Drug Enforcement Administration (DEA) on DEA Form 357.

5. An estimate of the total estimated number of respondents and the amount of time estimated for an average respondent to respond: 237 respondents at 1 response per year at 15 minutes per response.

6. An estimate of the total public burden (in hours) associated with the collection: 59.25 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: March 12, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–6963 Filed 3–17–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Statistics; Agency Information Collection Activities: Proposed Collection; Comment Request; 1998 National Study of DNA Laboratories

ACTION: Notice of information collection under review; New collection.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until; May 18, 1998. Request written comments and suggestions from the public and effected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarify of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Greg Steadman, Statistician, Bureau of Justice Statistics, 810 7th Street NW., Washington, DC 20531, or via facsimile (202) 307–5846.

Overview of this information collection:

(1) Type of information collection: New collection.

(2) The title of the form/collection: 1998 National Study of DNA Laboratories.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form number CLAB–1. Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State, Local or Tribal Government Other: None.

This information collection is a census of public crime laboratories that perform DNA analysis. The information will provide statistics on laboratories' capacity to analyze DNA evidence, the number and sources of DNA evidence received per year, the number, types, and costs of analyses completed. It will also identify the capacities of states to participate in a national DNA database.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: 160 respondents each taking an average 0.75 hours to respond.

(6) An estimate of the total public burden (in hours) associated with the collection: 120 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: March 13, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–7037 Filed 3–17–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1162]

RIN 1121–ZA99

National Institute of Justice Solicitation for Investigator-Initiated Research 1998

AGENCY: Office of Justice Programs, National Institute of Justice (NIJ), Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice "Solicitation for Investigator-Initiated Research."

DATES: Due date for receipt of proposals is close of business June 16, 1998 and December 15, 1998.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The National Institute of Justice (NIJ) is accepting research and development proposals through its 1998 Investigator-Initiated Solicitation. The most flexible

of the Institute's funding opportunities, the Investigator-Initiated Solicitation invites applicants to submit proposals that will help NIJ address general themes related to criminal justice. While the solicitation offers examples of general areas of interest, research themes and topic areas are to be constructed by the applicant. In this way, investigator-initiated research and development proposals differ from those defined in directed solicitations.

Funding levels for the Investigator-Initiated Solicitation generally range from $25,000 to $300,000 and the Institute promotes research collaborations with other Federal agencies and private foundations. Both small grant applications (requests for less than $50,000) and other grant applications (requests for $50,000 or more) will be considered.

NIJ is firmly committed to the competitive process for awarding grants. All proposals are subjected to an independent, peer-review panel evaluation. Panel members possess academic, practitioner, technical, and operational expertise in the proposed subject areas. The solicitation welcomes proposals from applicants representing both the social sciences and the physical sciences.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of "Solicitation for Investigator-Initiated Research, 1998" (refer to document no. SL000240). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 98–7005 Filed 3–17–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed consolidation and renewal of Job Corps applicant forms. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before May 18, 1998.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: June P. Veach, Office of Job Corps, 200 Constitution Avenue N.W., Room N–4507, Washington, D.C. 20210. E–Mail Internet Address: Veachj@doleta.gov; Telephone number: (202) 219–5556 (This is not a toll-free number); Fax number: (202) 219–5183 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Job Corps program is designed to serve disadvantaged young women and men, 16 through 24, who are in need of additional vocational, educational and social skills training, and other support services in order to gain meaningful employment, return to school or enter the Armed Forces. Authorized by the Job Training Partnership Act (JTPA), Job Corps is operated by the Department of Labor through a nationwide network of 115 Job Corps centers. The program is primarily a residential program operating 24 hours per day, 7 days per week, with non-resident enrollees limited by legislation to 20 percent of national enrollment. These centers presently accommodate more than 40,000 students. To ensure that the centers are filled with youth who are disadvantaged as well as capable of and committed to doing the work necessary to achieve the benefits of Job Corps, certain eligibility requirements have been established by the legislation.

The purpose of this collection is to gather information from applicants to the program in order to determine their eligibility for Job Corps. These forms are critical to the screening process. They are the initial forms completed by the Job Corps admissions counselors for each applicant.

The ETA 652, Job Corps Data Sheet, is used to obtain information for screening and enrollment purposes to determine eligibility for the Job Corps program in accordance with Title IV–B of the Job Training Partnership Act. It is prepared electronically by the admissions counselor for each applicant. It also provides demographic characteristics for program reporting purposes. Data for the form are collected by interview. The information collected determines eligibility in regard to age, legal U.S. residency, family income/welfare status, school status, behavioral problems (if any), parental consent, and child care needs of each applicant.

The ETA 655, Statement from Courts or Other Agencies, and ETA 655A, Statement from Institution, collect essential information for determining an applicant's eligibility. They are used to document past behavior problems for all applicants, as well as provide a basis for projecting future behavior. If this information were not obtained, serious problems could result from enrolling potentially dangerous individuals in Job Corps, which is a residential program. This could have legal implications for the Federal government.

The ETA 682, Child Care Certification, is used to certify an applicant's arrangements for care of a dependent child(ren) while the applicant is in Job Corps.

II. Current Actions

The following Job Corps application forms have expired. It was anticipated that the change to electronic collection would be completed much more quickly than has happened. The final version was not completed until January 1998.

Job Corps has continued to collect application data because it was necessary to the application process that youth receiving training on Job Corps centers be eligible for the benefits provided. No harm has been done while the forms were expired. No reports have been submitted and/or developed for Congress during the period.

Job Corps has now implemented electronic collection of data during the Job Corps application process. We request that the following forms used in the application process be reinstated and consolidated under OMB 1205–0025:

- ETA 652, Job Corps Data Sheet (1205–0025);
- ETA 655, Statement from Court or Other Agency (1205–0026);
- ETA 655A, Statement from Institution (1205–0026); and
- ETA 682, Child Care Certification (1205–0033).

The ETA 682 was previously included with the ETA 653, Health Questionnaire, in 1205–0033, but was removed from that collection by OMB at Job Corps' request. In addition, 6 items from the ETA 660, Request for Readmission, in 1205–0031, have been moved to the ETA 652. The remainder of the form is not necessary to the application process and we are requesting that the ETA 660 be canceled as a separate form.

The overall result of these actions will be a reduction in paperwork burden hours and a streamlined electronic application. One other application form used to collect data for determining eligibility to Job Corps is the ETA 653, Health Questionnaire, which has previously been approved under 1205–0033. This will remain as a separate collection for OMB approval purposes, although it is collected electronically with the above forms at the time of application.

Type of Review: Reinstatement with change.

Agency: Employment and Training Administration

Title: Application Data Collection.

OMB Numbers: 1205–0025.

Agency Numbers: ETA 652, ETA 655, ETA 655A, and ETA 682.

Recordkeeping: Applicant is not required to retain records; admissions counselors or contractor main offices are required to retain records of applicants who enroll in the program for 3 years from date of application.

Affected Public: Individuals who apply to Job Corps; Business or other for-profit/Not-for-profit institutions; State, Local or Tribal Government.

Cite/Reference/Form/etc:

Title	Total respondents	Frequency	Average time per respondent	Burden
Job Corps Application ETA 652	103,000	1/person	.25	25,750
Statement from Court ETA 655	103,000	1/person	.25	25,750
Statement from Institution ETA 655A	10,300	On occasion	.25	2,575
Child Care Certification ETA 682	7,000	On occasion	.15	1,050
Total				55,125

Total Burden Cost (capital/startup): When the electronic system was initially piloted and implemented in 1996, the start-up costs totaled $2,680,000, including $2,000,000 for 925 computer workstations, $480,000 for training Job Corps admissions counselors and center staff and, in 1997, $200,000 for replacements and memory upgrades. These were one-time-only costs.

Total Burden Cost (operating/maintaining): Operating and maintenance services associated with these forms are contracted yearly by the Federal government with outreach and admissions contractors, according to designated recruiting areas. This is one of the many functions the contractors perform for which precise costs cannot be identified. Based on past experience, however, the annual cost for contractor staff and related costs is estimated to be about $771,750. With the addition of $283,894 for the value of applicant time based on a minimum wage of $5.15 per hour, the total burden cost is $1,055,644.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 10, 1998.

Mary H. Silva,

National Director, Job Corps.

[FR Doc. 98–7019 Filed 3–17–98; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act, Title III, Demonstration Program: Dislocated Worker Technology Demonstration Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Availability of Funds and Solicitation for Grant Applications (SGA).

SUMMARY: All information required to submit a grant application is contained in this announcement. The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces a demonstration program to test the ability of the workforce development system to partner with employers, training providers and others to train dislocated workers in the skills necessary to obtain work requiring high technology skills in occupations and industry settings with long-term growth potential. The program will be funded with Secretary's National Reserve funds appropriated for Title III of the Job Training Partnership Act (JTPA) and administered in accordance with 29 CFR Part 95 and 97 as applicable.

This notice provides information on the process that eligible entities must use to apply for these demonstration funds and how grantees will be selected. It is anticipated that up to $6 million will be available for funding demonstration projects covered by this solicitation, with no award being more than $750,000.

DATES: The closing date for receipt of proposals is April 30, 1998 at 2 p.m. (Eastern Time).

ADDRESSES: Applications shall be mailed to: U.S. Department of Labor; Employment and Training Administration; Division of Acquisition and Assistance; Attention: B. Yvonne Harrell, Reference: SGA/DAA 98–006; 200 Constitution Avenue, N.W., Room S–4203; Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: B. Yvonne Harrell, Division of Acquisition

and Assistance. Telephone (202) 219–8694 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This announcement consists of five parts. Part I describes the authorities and purpose of the demonstration program and identifies demonstration policy. Part II describes the application process and provides guidelines for use in applying for demonstration grants. Part III includes the statement of work for the demonstration projects. Part IV describes the selection process, including the criteria that will be used in reviewing and evaluating applications. Part V discusses the demonstration program's monitoring, reporting and evaluation.

Part I. Background

A. Authorities

Section 323 of JTPA (29 U.S.C. 1662b) authorizes the use for demonstration programs of funds reserved under Section 302 of JTPA (29 U.S.C. 1652) and provided by the Secretary for that purpose under Section 322 of JTPA (29 U.S.C. 1662a). Demonstration program grantees shall comply with all applicable federal and state laws and regulations in setting up and carrying out their programs.

B. Purpose

It is now well understood that the economy has transitioned from the industrial age to the information age. In this age, the most valued commodities are the skills and knowledge possessed by the individual. These skills are the essential ingredient necessary to compete for jobs in an information-based economy. Global competition has reached an unprecedented level. Technology plays an increasingly important role in this global scenario as nations strive to build things or provide services that are faster, better or cheaper than their competitors.

In this era of global competition and rapid technological advances, technology is the most critical driver of economic growth. The U.S. Department of Commerce, Office of Technology Policy, has reported advances in technology to be the single most important determining factor in sustaining economic growth, estimated to account for as much as half of the Nation's long-term economic growth over the past 50 years. Traditional work environments have altered, as have the requisite skills needed by workers to succeed in today's workplace. Technology provides the tools for creating a wide array of new products and new services that reach well beyond the narrow confines of traditional labor markets. A product or service can now be provided from almost any community, each with the potential to reach global markets. The ability of a company to innovate, incorporate technology, improve products or services, increase market share and thus expand capacity and employment is the engine of economic growth.

Information technologies are the most important enabling technologies in the economy today. They affect every sector and every industry in the United States, in terms of digitally based products, services, and production and work processes. The very nature of advanced technology lies in the ability of a business or industry to identify, assess, adopt and incorporate information based technologies into everyday business and production processes. However, too many Americans are not adequately prepared for work place roles in this new economy. The information/knowledge based workplace of today's leading companies requires workers to possess conceptual, analytical, communication, interpersonal, and self-management skills beyond the basic academic and technical skills of the traditional workplace. There is often a skills deficit experienced by employers who continuously push the envelop to innovate, and adopt new technology in order to stay ahead of competitors, both domestic and international.

With accelerated changes in technology, America's workers often discover their skill base has become out of date. New approaches are needed to help American workers stay competitive. Workers need to know and understand what skills employers are looking for, and they need to have the means to raise their skills to match that demand.

Our Nation's workforce development system is working to meet this need, but skill shortages in information and advanced technology are currently very high in some industry sectors and geographic areas. Severe shortages of workers who can apply and use information and advanced technologies could undermine U.S. innovation, productivity, and competitiveness in world markets. A steady supply of skill workers will help our Nation's industries remain competitive. More importantly, these workers need to possess the appropriate skills demanded in the workplace. Ideally, a system of "just in time" education and training would be able to supply skilled workers that meet industry driven standards and certifications.

The purpose of this demonstration is to test the ability of the Nation's workforce development system to partner with employers, training providers and others to train dislocated workers in the skills necessary to obtain work requiring information and advanced technology skills in occupations and industries experiencing shortages of such workers.

As a part of the Nation's Workforce Development System, programs funded under Title III of the Job Training Partnership Act annually provide adjustment and training assistance to over 500,000 individuals who have lost their jobs through no fault of their own. The vast majority of Title III funds are managed by over 600 substate grantees. These organizations design and operate a national system for training and reemployment programs based on: (1) The needs and characteristics of the local dislocated worker population; (2) the needs of local employers for skilled workers; and (3) the capabilities and capacities of training institutions and other local service providers. Also emerging is an infrastructure for a One-Stop/Career Center system to provide comprehensive and integrated workforce development services to both participants and employers. The Secretary of Labor uses a portion of the Title III funds to support demonstration projects to test new and innovative means of assisting dislocated workers.

Under this demonstration, the Department will fund projects that document the existence of and respond to the widely reported shortage across the nation of workers in information and advanced technology jobs. For purposes of this solicitation, the term "information and advanced technology" may be viewed broadly as the link between people, information and technology in the workplace. It encompasses computers, communication, data and information systems' hardware and software, but also the personnel who design, manage, operate, support and maintain these systems. For example, in the manufacturing sector, the application of information technology for technology transfer, high performance management, statistical process control, quality control, and data management are a fundamental part of operating as a high performance, world class organization. More specifically, information technology occupations comprise computer or computer systems related jobs engaged in either managing, storing, transmitting, or generating the information that organizations use to make decisions or installing, repairing or supporting the computer hardware and software used to perform such tasks.

Successful applications may be based on the use of new or innovative service strategies such as the involvement of new target groups of dislocated workers for existing training programs; the development and use of curricula geared specifically to eligible groups of dislocated workers and the needs of employers with openings in technology-related jobs; or the use of curriculum and skills training interventions designed to impart knowledge, skills and abilities of industry skill standards (where available). Each successful application will document substantive linkages with specific employers where there is a strong demand for workers with technology-related skills. Successful proposals will address the demonstration program goals of placement of the project participants in information and advanced technology jobs trained for as a part of the project. Participant satisfaction with project services and with their jobs, as well as their employer's satisfaction with project services and with the participants' skill level and work, should also be measured.

C. Demonstration Policy

1. Grant Awards

DOL anticipates awarding eight to ten grants, not to exceed $750,000 per grant. It is anticipated that awards will be made by June 30, 1998. Award decisions will be published on the Internet at ETA's Home Page at http://www.doleta.gov.

2. Eligible Applicants

Any organization capable of fulfilling the terms and conditions of this solicitation may apply. Under Lobbying Disclosure Act of 1995, Section 18, an organization described in Section 501(c)(4) of the Internal Revenue code of 1986 which engages in lobbying activities shall not be eligible for the receipt of Federal funds constituting an award grant or loan. This is a risk free Federal program: therefore, all for profit organizations that apply will not be able to receive a fee if awarded a grant.

3. Eligible Participants

All participants must be eligible dislocated workers as defined at JTPA Section 301(a)(1), and 314(h)(1) of the Job Training Partnership Act. These sections of the law may be viewed at http://doleta.gov/regs/statutes/jtpalaw.htm. Proposed projects may target subgroups of the eligible population based on factors such as (but not limited to) occupation, industry, nature of dislocation, and reason for unemployment.

4. Allowable Activities

Funds provided through this demonstration may be used only to provide services of the type described at Section 314(c) and (d) of JTPA. Supportive services are defined in Section 4(24) of JTPA. (Use ETA's web site reference above to view.)

Grant funds may be used to reimburse employers for extraordinary costs associated with on-the-job training of program participants, in accordance with 20 CFR 627.240. Grant funds may not be used for the following purposes: (a) For training that an employer is in a position to provide and would have provided in the absence of the requested grant; (b) to pay salaries for program participants; and (c) for acquisition of production equipment. Applicants may budget limited amounts of grant funds to work with technical experts or consultants to provide advice and develop more complete project plans after a grant award. The level of detail in the project plan may affect the amount of funding provided.

Grant activities may include: (a) Development, testing and initial application of curricula focused on intensive, short-term training to get participants into productive, high demand information or advanced technology employment as quickly as possible; (b) working with employers to utilize cutting-edge technology and equipment in worksite-based learning strategies; (c) development of employer-based training programs that will take advantage of opportunities created by employers' needs for workers with new information and advanced technology skills; (d) development and initial application of contextual learning opportunities for participants to learn technology theory in a classroom setting while applying that learning in an on-the-job setting; (e) use of curriculum and skills training programs that are designed to impart learning to meet employer specified or industry specific skill standards or certification requirements; or (f) innovative linkage and collaboration between employers and the local Substate Grantee and/or One-Stop/Career Center system to ensure a steady supply of high demand, high skill information or advanced technology workers.

The above are illustrative examples and are not intended to be an exhaustive listing of possible demonstration project designs or approaches which may achieve the purpose of this solicitation. However, successful applicants must demonstrate the direct involvement by employers experiencing skill shortages as well as provide substantive documentation about the existence of skill shortages for the industry or occupations to be targeted by the proposed project.

5. Coordination

In order to maximize the use of public resources and avoid duplication of effort, applicants will coordinate the delivery of services under this demonstration with the delivery of services under other programs (public or private), available to all or part of the target group. Projects linking or collaborating with an existing USDOL funded One-Stop/Career Center initiative and/or local JTPA Substate Grantee located within a project area fulfill this requirement.

6. Period of Performance

The period of performance shall be 24 months from the date of execution by the Government. Delivery of services to participants shall commence within 90 days of execution of a grant.

7. Option To Extend

DOL may elect to exercise its option to extend these grants for an additional one (1) or two (2) years of operation, based on the availability of funds, successful program operation, and the needs of the Department.

Part II. Application Process and Guidelines

A. Contents

An original and three (3) copies of the application shall be submitted. The application shall consist of two (2) separate and distinct parts: Part I, the Financial Proposal, and Part II, the Technical Proposal.

1. Financial Application

Part I, the Financial Proposal, shall contain the SF–424, "Application for Federal Assistance" (Appendix A) and the "Budget Information" (Appendix B). The Federal Domestic Assistance Catalog number is 17.246.

The budget shall include on separate pages detailed breakouts of each proposed budget line item, including detailed administrative costs and costs for one or more of the following categories as applicable: Basic readjustment services, supportive services, and retraining services. For each budget line item that includes funds or in-kind contributions from a source other than the grant funds, identify the source, the amount, and in-kind contributions, including any restrictions that may apply to these funds.

2. Technical Proposal

Part II, the technical proposal shall demonstrate the offeror's capabilities in accordance with the Statement of Work in Part III of this solicitation. A grant application shall be limited to twenty (20) double-spaced, single-side, 8.5-inch x 11-inch pages with 1-inch margins. Attachments shall not exceed ten (10) pages. Text type shall be 11 point or larger. Applications that do not meet these requirements will not be considered. Each application shall include the Checklist provided as Appendix C, a Timeline outlining project activities, and an Executive Summary not to exceed two pages. No cost data or reference to price shall be included in the technical proposal.

B. Hand-Delivered Applications

Applications should be mailed no later than five (5) days prior to the closing date for the receipt of applications. However, if applications are hand-delivered, they must be received at the designated place by 2:00 p.m., Eastern Time on the closing date for receipt of applications. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified time and closing date. Telegraphed and/or faxed proposals will not be honored. Applications that fail to adhere to the above instructions will not be honored.

C. Late Applications

Any application received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it:

(1) Was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the closing date specified for receipt of applications (e.g., an offer submitted in response to a solicitation requiring receipt of application by the 30th of January must have been mailed by the 25th); or

(2) Was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of application. The term "working days" excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service registered or certified mail is the U.S. postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if it had been mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by "Express Mail Next-Day Service—Post Office to Addressee" is the date entered by the post office receiving clerk on the "Express Mail Next Day Service—Post Office to Addressee" label and the postmarks on both the envelope and wrapper and the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, an applicant should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

D. Withdrawal of Applications

Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

Part III. Statement of Work

Each grant application must follow the format outlined in this Part. For sections A through G below, each application should include:

(1) Information that indicates adherence to the provisions described in Part I, Background (Authorities, Purpose, and Demonstration Policy) and Part II, Application Process and Guidelines, of this announcement; and (2) other information that the applicant believes will address the selection criteria identified in Part IV of this solicitation.

Information required under A and B below shall be provided separately for each labor market area where dislocated workers will be served. To the extent that the project design differs for different geographic areas, information required under section C below shall be provided for each geographic area.

A. Target Population

Describe the proposed target population for the project. If that population is limited to one or more subgroups of the dislocated worker population, explain the basis for such limitation. Describe the size, location, and needs of the target population relative to the services to be provided. Provide documentation showing there is a significant number of dislocated workers with the target population's characteristics in the project area(s).

If the project seeks to serve under represented subgroups within a particular occupation, describe services to that subgroup and provide reliable and substantive documentation of the group's under representation.

B. Available Jobs

Describe the jobs that will be available and targeted for placement to project participants upon completion of training and placement services, and the documentation on which such description is based. Include information about the number and type of jobs, wage information and the specific set of skills, knowledge or duties (including any industry-sponsored standards of certifications), and the insufficiency of qualified workers to fill those positions in the absence of the proposed project. Identify sources of the occupational information or data used. Anecdotal data should not be used. Information from the Bureau of Labor Statistics (BLS) available through a variety of web sites including BLS, O*NET and America's Labor Market Information System (ALMIS), should be considered as a key source of documentation. In addition, State Occupational Information Coordinating Committee (SOICC) and JTPA Substate Grantee local job training plan may also be considered.

C. Project Design

(1) Purpose. Describe the specific purpose or purposes of the proposed project.

(2) Outreach and recruitment. Describe how eligible dislocated workers will be identified and recruited for participation in the project. Recruitment efforts may address public service communications and announcements, use of media, coordination with the JTPA Service Delivery Area or Substate Grantee, use of community-based organizations and other service groups. Describe the applicant's experience in reaching the target population. Non-JTPA applicants should partner with the appropriate JTPA Title III Substate Grantee(s) to plan and implement effective outreach and recruitment strategies.

(3) Eligibility determination. Describe the criteria and process to be used in determining the JTPA Title III eligibility

of potential participants in the project. Non-JTPA applicants should partner with the appropriate JTPA Title III substate grantee(s) to carry out eligibility determination.

(4) Selection criteria. Describe the criteria and process to be used in selecting those individuals to be served by the project from among the total number of eligible persons recruited for the project. Explain how the selection criteria relate to the specific purpose of the proposed project.

(5) Services to be provided. Describe the services to be provided from the time of selection of participants through placement of those participants in jobs. Describe any services to be provided subsequent to job placement. The descriptions shall provide a clear understanding of the services and support that will be necessary for participants to be placed successfully in jobs and to retain those jobs, including services not funded under the grant, and ways to address participants' financial needs during periods of training. Grant-funded activities should, at a minimum, include assessment, retraining, job placement, and supportive services.

Identify any assessment tools proposed to be used before or after services are provided. Describe how training will be customized to account for transferable skills, previous education, and particular circumstances of the target population and the skill needs of the hiring employer(s).

Include information to demonstrate that any proposed training provider is qualified to deliver training that meets appropriate employment standards, and any applicable certification or licensing requirement. Past performance, qualifications of instructors, accreditation of curricula, and similar matters should be addressed if appropriate. Address the costs of proposed training and other services relative to the costs of similar training and services through other providers.

Describe the limitations and eligibility criteria for relocation assistance, if such assistance is included in the proposal.

(6) Participant flow. Provide a flowchart with time indications to illustrate how the project will ensure access to necessary and appropriate reemployment and retraining services. Describe the sequence of services and the criteria to be used to determine the appropriateness of specific services for particular participants. Note if service choice options will be available to participants.

(7) Relationship to prior experience. Show how the applicant's prior experience in working with dislocated individuals affects or influences the design of the proposed project.

D. Planned Outcomes

A description of the project outcomes and of the specific measures, and planned achievement levels, that will be used to determine the success of the project. These outcomes and measures must include, but are not limited to:

(1) The number of participants projected: to be enrolled in services, to successfully complete services through the project, and to be placed into new jobs; a minimum of 80 percent entered employment rate is required;

(2) Measurable effects of the services provided to project participants as indicated by gains in individuals' skills, competencies, or other outcomes;

(3) Wages of participants prior to, at placement and 90 days after placement; a minimum of 90 percent average wage replacement rate is required;

(4) As part of the targeted outcome for wage at placement, each project should benchmark two key wage averages for the labor market in which each project will operate. These are: (a) The average weekly wage in the manufacturing sector; and (b) the average wage at placement for the JTPA Title III, dislocated worker program operated by the local Substate Grantee.

(5) For each project, at least 80 percent of the individuals placed shall be placed at a wage that meets or exceeds (a) the average manufacturing wage in the labor market area, or (b) the average wage at placement for the last program year completed (currently 1996) for the JTPA Title III dislocated worker program operated by the local Substate Grantee in the targeted labor market, whichever is greater. The manufacturing wage for any labor market may be obtained from the Covered Wages and Employment Program administered by each State's Employment Service.

(6) Customer satisfaction with the project services, and of critical points in the service delivery process;

(7) Planned average cost per placement (amount of the grant request divided by the number of program-related placements); and

(8) Other additional measurable, performance-based outcomes that are relevant to the project and which may be readily assessed during the period of performance of the project, such as cost effectiveness of services and comparison with other available service strategies.

Note: An explanation of how such additional measures are relevant to the purpose of the demonstration program shall be included in the application.

E. Collaboration

Describe the nature and extent of collaboration and working relationships between the applicant and other entities in the design and implementation of the proposed project. Include services to be provided through resources other than grant funds under this demonstration. Applicants are encouraged to commit matching funds to the implementation and management of their proposed programs. Matches may be in the form of cash or in-kind contributions. These may include but are not limited to such contributions as the development of training modules; payment of tuition costs for training; support for child care or transportation; and provision of staff time at no cost to the project. Sources of matching funds may include but are not limited to employers, employer associations, labor organizations, and training institutions. With reference to the sources and amounts of project funds and in-kind contributions identified in the financial proposal as being other than those requested under the grant applied for. describe the basis for valuation of those funds and contributions.

Provide evidence, which ensures the collaboration described can reasonably be expected to occur, such as letters of agreement or formally established advisory councils. Because a core purpose of this demonstration program involves the publicly funded workforce system, the applicant shall describe working relationships with local Substate Grantee(s), including One-Stop/Career Center entities where present. Describe activities that may be undertaken to link activities to program interventions under this grant to employer, industry, or curriculum/learning centers currently designing and developing occupational/job skill standards and certifications. Collaboration should focus on linking employers involved in grant activities with any employer, industry, or trade and worker association that has already developed or is developing skill standards certifications.

Documentation of consultation on the project concept from applicable labor organizations must be submitted when 20 percent or more of the targeted population is represented by one or more labor organizations, or where the training is for jobs when a labor organization represents a substantial number of workers engaged in similar work.

F. Innovation

Describe any innovation in the proposed project, including (but not

limited to) innovations in concept to be tested, services, delivery of services, training methods, job development, or job retention strategies. Explain the impact of such innovation on project costs. Explain how the proposed project is similar to and differs from the applicant's prior and current activities.

G. Project Management

(1) Structure. Describe the management structure for the project, including a staffing plan that describes each position and the percentage of its time to be assigned to this project. Provide an organizational chart showing the relationship among project management and operational components, including those at multiple sites of the project.

(2) Program Integrity. Describe the mechanisms to ensure financial accountability for grant funds and performance accountability relative to job placements, in accordance with standards for financial management and participant data systems in 29 CFR Part 95 or 97, as appropriate, and 20 CFR 627.425. Explain the basis for the applicant's administrative authority over the management and operational components. Describe how information will be collected to determine the achievement of project outcomes as indicated in section D of this part; and report on participants, outcomes, and expenditures.

(3) Monitoring. (a) Benchmarks. Provide a timeline of benchmarks covering the period of performance of the project. Include a monthly schedule of planned start-up events; a quarterly schedule of planned participant activity, showing cumulative numbers of enrollments, participation in training and other services, placements, and terminations; and quarterly cumulative expenditure projections.

(b) Participant progress. Describe how a participant's continuing participation in the project will be monitored.

(c) Project performance. Identify the information on project performance that will be collected on a short-term basis (e.g., weekly or monthly) by program managers for internal project management to determine whether the project is accomplishing its objectives as planned and whether project adjustments are necessary.

Describe the process and procedures to be used to obtain feedback from participants, employers, and any other appropriate parties on the responsiveness and effectiveness of the services provided. The description shall identify the types of information to be obtained, the methods and frequency of data collection, and ways in which the information will be used in implementing and managing the project. Grantees may employ focus groups and surveys, in addition to other methods, to collect feedback information. Technical assistance in the design and implementation of customer satisfaction data collection and analysis may be provided by DOL.

(d) Impact of Coordination and Innovation. Describe the process for assessing and reporting on the impact of coordination and innovation in the project with respect to the purpose and goals of the demonstration program and the specific purpose and goals of the project.

(4) Grievance Procedure. Describe the grievance procedure to be used for grievances and complaints from participants, contractors, and other interested parties, consistent with the requirements at Section 144 of JTPA and 20 CFR 631.64(b) and (c).

(5) Previous Project Management Experience. Provide an objective demonstration of the grant applicant's ability to manage the project, ensure the integrity of the grant funds, and deliver the proposed performance. Indicate the grant applicant's past experience in the management of grant-funded projects similar to that being proposed, particularly regarding oversight and operating functions including financial management.

Part IV. Evaluation Criteria

Selection of grantees for awards will be made after careful evaluation of grant applications by a panel selected for that purpose by DOL. Panel results will be advisory in nature and not binding on the ETA Grant Officer. Panelists shall evaluate proposals for acceptability based upon overall responsiveness in accordance with the factors below.

A. Target Population (10 points)

The description of the characteristics of the target group to be served is clear and meaningful, and sufficiently detailed to determine the potential participants' service need. Documentation is provided showing that a significant number of eligible dislocated workers who possess these characteristics are available for participation within the project area. Sufficient information is provided to explain how the number of dislocated workers to be enrolled in the project was determined. The recruitment plan supports the number of planned enrollments. The target population is appropriate for the specific purpose of the proposed project. The project identifies underrepresented groups to be trained in the targeted occupation(s).

B. Service Plan and Cost (30 points)

The scope of services to be provided is consistent with the demonstration program and project purposes and goals. The scope of services to be provided is adequate to meet the needs of the target population given:

(1) Their characteristics and circumstances;

(2) The jobs in which they are to be placed relative to targeted wage at placement goals;

(3) The match between the documented skill shortage and the training planned;

(4) The documentation provided specifying that training meets or is developed based on industry driven skill standards or certifications; and

(5) The length of program participation planned prior to placement.

Documentation and reliability of job availability is based upon recognized, reliable and timely sources of information.

Proposed costs are reasonable in relation to the characteristics and circumstances of the target group, the services to be provided, planned outcomes, the management plan, and coordination/collaboration with other entities, including One-Stop/Career Center organizations. The impact of innovation on costs is explained clearly in the proposal and is reasonable.

Identification is provided of the specific sources and amounts of other funds which will be used, in addition to funds provided through this grant, to implement the project. The application must include information on any non-JTPA resources committed to this project, including employer funds, grants, and other forms of assistance, public and private. Value and level of external resources being contributed, including employer contributions, to achieve program goals will be taken into consideration in the rating process.

C. Management (20 points)

The applicant (as a part of a collaborative approach) has experience working with technology training. The management structure and management plan for the proposed project will ensure the integrity of the funds requested. The project work plan demonstrates the applicant's ability to effectively track project progress with respect to planned performance and expenditures. Sufficient procedures are in place to use the information obtained by the project operator(s) to take corrective action if indicated. In addition, review by appropriate labor organizations, where applicable, is documented.

The proposal includes a method of assessing customer feedback for both participants and employers involved, and establishes a mechanism to take into account the results of such feedback as part of a continuous system of management and operation of the project.

D. Collaboration (15 points)

The proposal includes evidence of direct participation by JTPA SubState Grantees and One-Stop/Career Center entities (where present) in the planning and management of this grant. Evidence of participation of employers whose positions are targeted under the grant is present. Evidence of coordination with other programs and entities for project design or provision of services may also be provided. Evidence is presented that ensures cooperation of coordinating entities, as applicable, for the life of the proposed project. The project includes a reasonable method of assessing and reporting on the impact of such coordination, relative to the demonstration purpose and goals and the specific purpose and goals of the proposed project.

E. Innovation (20 points)

The proposal demonstrates innovation in the concept(s) to be tested, the project's design, and/or the services to be provided. "Innovation" refers to the degree to which such concept(s), design and/or services are not currently found in dislocated worker programs. The project includes a reasonable method of assessing and reporting on the impact of such innovation, relative to the demonstration program and project purposes and goals.

F. Sustainability (5 points)

The proposal provides evidence that, if successful, activities supported by the demonstration grant will be continued after the expiration date of the grant, using JTPA Title III formula-allotted funds or other public or private resources.

Grant applications will be evaluated for the reasonableness of proposed costs, considering the proposed target group, services, outcomes, management plan, and coordination with other entities.

Applicants are advised that discussions may be necessary in order to clarify any inconsistency or ambiguity in their applications. The final decision on awards will be based on what is most advantageous to the Federal Government as determined by the ETA Grant Officer. The Government may elect to award grant(s) without discussion with the applicant(s). The applicant's signature on the Application for Federal Assistance (Standard Form) SF–424 constitutes a binding offer.

Part V. Monitoring, Reporting and Evaluation

A. Monitoring

The Department shall be responsible for ensuring effective implementation of each competitive grant project in accordance with the Act, the Regulations, the provisions of this announcement and the negotiated grant agreement. Applicants should assume that at least one on-site project review will be conducted by Department staff, or their designees. This review will focus on the project's performance in meeting the grant's programmatic goals and participant outcomes, complying with the targeting requirements regarding participants who are served, expenditure of grant funds on allowable activities, collaboration with other organizations as required, and methods for assessment of the responsiveness and effectiveness of the services being provided. Grants may be subject to their additional reviews at the discretion of the Department.

B. Reporting

DOL will arrange for or provide technical assistance to grantees in establishing appropriate reporting and data collection methods and processes. An effort will be made to accommodate and provide assistance to grantees to be able to complete all reporting electronically.

Applicants selected as grantees will be required to provide the following reports:

1. Monthly and Quarterly Progress Reports.
2. Standard Form 269, Financial Status Report Form, on a quarterly basis.
3. Final Project Report including an assessment of project performance. This report will be submitted in hard copy and on electronic disk utilizing a format and instructions to be provided by the Department.

C. Evaluation

DOL will arrange for or conduct an independent evaluation of the outcomes, impacts, and benefits of the demonstration projects. Grantees must agree to make available records on participants and employers and to provide access to personnel, as specified by the evaluator(s) under the direction of the Department.

Signed at Washington, DC, this 13th day of March 13, 1998.

Janice E. Perry,

Grant Officer, Division of Acquisition and Assistance.

Appendices

1. Appendix A—Application for Federal Assistance (Standard Form 424).
2. Appendix B—Information.
3. Appendix C—Application Checklist.

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION:		2. DATE SUBMITTED	Applicant Identifier
Application ☐ Construction ☐ Non-Construction	Preapplication ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipa
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H Independent School Dist.
I State Controlled Institution of Higher Learning
J . Private University
K Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. *Personnel: Show salaries to be paid for project personnel.*

2. *Fringe Benefits: Indicate the rate and amount of fringe benefits.*

3. *Travel: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. *Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.*

5. *Supplies: Include the cost of consumable supplies and materials to be used during the project period.*

6. *Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. *Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. *Total, Direct Costs: Add lines 1 through 7.*

9. *Indirect Costs: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. *Training /Stipend Cost: (If allowable)*

11. *Total Federal funds Requested: Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

Appendix C
Application Checklist

Please complete and submit this checklist with your application. It should be used as a quick reference of key provisions of the Solicitation and whether or not these provisions have been included, complied with or addressed. This document is not intended to be comprehensive or address every aspect of the solicitation.

Organization Applying_____.

Contact Person_____.

Phone Number_____.

Date submitted_____.

Application Process

___Application is 20 pages or less.
___Attachments limited to 10 or fewer.
___An original and three copies submitted.
___SF424 (Appendix A) included.
___SF424a (Appendix B) included.
___Project Line-Item Budget Estimates (Appendix C) included.
___Checklist (Attachment D) included.
___Timeline included.
___Executive Summary of two pages or less included.

Financial and Technical Provisions

___Target Population identified, with supportive documentation.
___Underrepresented subgroup identified and services addressed.
___Number and type of targeted jobs, applicable skill sets and certifications/standards identified.
___Sources and credibility of labor market/job data cited.
___Approach to identifying and recruiting eligible participants included.
___Eligibility determination approach discussed.
___Process in selecting eligible participants discussed.
___Sequence of services and activities to be provided discussed.
___Justification and qualifications for each training provider (including instructors) discussed.
___Cost/Price analysis for use of specified training included.
___Relocation Assistance, if used, addressed.
___Flowchart of participant services included.
___Applicants' prior experience with dislocated workers addressed.

___All project outcomes and measures of success specified in Part III D addressed.
___Role and involvement in the project of employers experiencing skill shortages discussed and documented.

___Role of the local JTPA Substate Grantee for dislocated worker programs and One-Stop/Career Center system discussed and documented.
___Method of assessing and reporting continuation and impact of coordination included.
___Specific skill standards and certification for targeted occupations identified and discussed.
___Labor organization consultation, where applicable, discussed and documented.
___Coordination with other entities discussed.
___Innovation and impact of the project discussed.
___Management structure and staffing plan addressed and method of continuous oversight described.
___Organizational chart and relationships included.
___Mechanism to ensure financial accountability discussed.
___Basis for applicant*s administrative authority addressed.
___Applicant's Method/System to collect, track, manage, report, and utilize data on the project's progress and performance addressed.
___Ability to collect and submit SPIR data indicated.
___Benchmarks to indicate planned implementation schedule included.
___Method to obtain feedback from participants and employers discussed.
___Grievance procedure addressed.
___Past experience in managing grant funded projects discussed.
___Project's sustainability addressed.

[FR Doc. 98–7000 Filed 3–17–98; 8:45 am]
BILLING CODE 4510–30–C

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–040)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: March 18, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas H. Jones, Patent Counsel, NASA Management Office—JPL, 4800 Oak Grove Drive, Mail Stop 180–801, Pasadena, CA 91109; telephone (818) 354–5179.

NPO–19522–1–CU: Optical Circuit Switched Protocol.

Dated: March 9, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–6920 Filed 3–17–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–039]

NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Air Traffic Management Research and Development Executive Steering Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Air Traffic Management Research and Development Executive Steering Committee.

DATES: Tuesday, May 12, 1998, 8 a.m. to 5:30 p.m. and Wednesday, May 13, 1998, 8 a.m. to 5:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, Building 1209, Room 180, Hampton, VA 23681–0001.

FOR FURTHER INFORMATION CONTACT: Dr. Victor Lebacqz, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 650/604–5792.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the meeting are as follows:

—Capacity Program Update
—AATT Program Update
—Subelement 6 Technical Review
—National ATM Plan Review
—Related FAA CNA/ATM Research

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: March 11, 1998.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–6919 Filed 3–17–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–041)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that FlowGenix Corporation of Webster, Texas, has applied for an exclusive patent license to practice the invention described and claimed in NASA Case No. MSC–22419–2, entitle "Porous Article With Surface Functionality and Method for Preparing Same," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Johnson Space Center.

DATES: Responses to this notice must be received by May 18, 1998.

FOR FURTHER INFORMATION CONTACT: Hardie R. Barr, Patent Attorney, Johnson Space Center, Mail Code HA, Houston, TX 77058–3696, telephone (281) 483–1003.

Dated: March 6, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–6921 Filed 3–17–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for a Literary Journal Institute

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a two year Cooperative Agreement to provide literary magazines with training and technical assistance to help assist in areas designed to provide continual earned revenue streams such as the development of effective renewal strategies, distribution channels, compensated advertising, and use of the internet; provide consultation designed to help magazines generate new strategies for increasing and diversifying contributions and plan for growth; and develop a network of mentoring relationships between journals to disseminate organizational expertise and experience throughout the field. The project will include managing seminars throughout the country for literary magazine staff, providing in-person consultation to facilitate strategic organizational improvements, and coordinating mentoring. Those interested in receiving the Solicitation package should reference Program Solicitation PS 98–03 in their written request. Requests must be accompanied by two self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 98–03 is scheduled for release approximately April 6, 1998 with proposals due May 6, 1998.

ADDRESSES: Requests for the Solicitation should be addressed to National Endowment for the Arts, Grants & Contracts Office, Room 618, 1100 Pennsylvania Ave., NW, Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: William Hummel, Grants & Contracts Office, National Endowment for the Arts, Room 618, 1100 Pennsylvania Ave., NW, Washington, D.C. 20506 (202/682–5482).

William I. Hummel,

Coordinator, Cooperative Agreements and Contracts.

[FR Doc. 98–7003 Filed 3–17–98; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

In the Matter of the Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, OES Nuclear, Inc., Pennsylvania Power Company, Toledo Edison Company (Perry Nuclear Power Plant, Unit 1); Order Approving Application Regarding Merger Agreement Between DQE, Inc., and Allegheny Power System, Inc.

I

The Cleveland Electric Illuminating Company (CEI), Centerior Service Company (CSC), Duquesne Light Company (DLC), Ohio Edison Company, OES Nuclear, Inc., Pennsylvania Power Company, and Toledo Edison Company are the licensees of Perry Nuclear Power Plant, Unit 1 (PNPP). CEI and CSC act as agents for the other licensees and have exclusive responsibility for and control over the physical construction, operation, and maintenance of PNPP as reflected in Facility Operating License No. NPF–58. The Nuclear Regulatory Commission (NRC) issued License No. NPF–58 on March 18, 1986, pursuant to Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR Part 50). The facility is located on the shores of Lake Erie in Lake County, Ohio, approximately 35 miles northeast of Cleveland, Ohio.

II

Under cover of a letter dated August 1, 1997, DLC submitted an application for consent under 10 CFR 50.80 regarding a proposed merger of DQE, Inc. (the parent holding company of DLC), and Allegheny Power System, Inc. which would result in DQE, Inc. becoming a wholly owned subsidiary of Allegheny Power System, Inc. Allegheny Power System, Inc. would change its name to Allegheny Energy, Inc. (Allegheny Energy). CEI, CSC, Ohio Edison Company, OES Nuclear, Inc., Pennsylvania Power Company, and Toledo Edison Company are not involved in the merger. Supplemental information was submitted by letter dated October 30, 1997.

Under the proposed merger, DLC will become an indirect subsidiary of Allegheny Energy by reason of DQE, Inc. becoming a subsidiary of Allegheny Energy. DLC and the other current licensees will continue to hold the license, and no direct transfer of the license will result from the merger. On October 21, 1997, a Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring was published in the **Federal Register** (62 FR 54655). An Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on October 21, 1997 (62 FR 54657).

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information submitted in the application and letters of August 1, 1997, and October 30, 1997, the NRC staff has determined that the proposed merger will not affect the qualifications of DLC as holder of Facility Operating License No. NPF–58, and that the transfer of control of the license, to the extent effected by the proposed merger, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. These findings are supported by a safety evaluation dated March 11, 1998.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended; 42 USC §§ 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the Commission approves the application regarding the merger agreement between DQE, Inc. and Allegheny Power System, Inc. subject to the following:

(1) DLC shall provide the Director of the Office of Nuclear Reactor Regulation with a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from DLC to its first-or second-tier parent or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent of DLC's consolidated net utility plant, as recorded on DLC's books of account; and (2) should the merger not be completed by December 31, 1998, this Order shall become null and void, unless upon application and for good cause shown, this date is extended.

This Order is effective upon issuance.

IV

By April 17, 1998, any person adversely affected by this Order may file a request for a hearing with respect to issuance of the Order. Any person requesting a hearing shall set forth with particularity how such person's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is to be held, the Commission will issue an order designating the time and place of such hearing.

The issue to be considered at any such hearing shall be whether this Order should be sustained.

Any request for a hearing 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. Copies should also be sent to the Office of the General Counsel and to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to John O'Neill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

For further details with respect to this action, see DLC's application dated August 1, 1997, and supplemental letter dated October 30, 1997, and the safety evaluation dated March 11, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, OH.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 11th day of March 1998.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–6973 Filed 3–17–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275 and 50–323]

In the Matter of Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2); Exemption

I

Pacific Gas and Electric Company, et al. (the licensee) is the holder of Facility Operating License Nos. DPR–80 and DPR–82, which authorize operation of the Diablo Canyon Nuclear Power Plant (DCNPP), Unit Nos. 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules,

regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two pressurized-water reactors at the licensee's site located in San Luis Obispo County, California.

II

Section 50.71 of Title 10 of the Code of Federal Regulations (10 CFR), "Maintenance of records, making of reports," paragraph (e)(4) states, in part, that "Subsequent revisions must be filed annually or 6 months after each refueling outage provided the interval between successive updates to the FSAR does not exceed 24 months." The two DCNPP units share a common Final Safety Analysis Report (FSAR); therefore, this rule requires the licensee to update the same document within 6 months after a refueling outage for either unit.

III

Section 50.12(a) of 10 CFR, "Specific exemption," states that * * *

The Commission may, upon application by any interested person, or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are (1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. (2) The Commission will not consider granting an exemption unless special circumstances are present.

Section 50.12(a)(2)(ii) of the 10 CFR states that special circumstances are present when "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * *." The licensee's proposed schedule for FSAR updates will ensure that the DCNPP FSARs will be maintained current within 24 months of the last revision and the interval for submission of the 10 CFR 50.59 design change report will not exceed 24 months. The proposed schedule fits within the 24-month duration specified by 10 CFR 50.71(e)(4). Literal application of 10 CFR 50.71(e)(4) would require the licensee to update the same document within 6 months after a refueling outage for either unit, a more burdensome requirement than intended. Accordingly, the Commission has determined that special circumstances are present as defined in 10 CFR 50.12(a)(2)(ii).

IV

The Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety and is consistent with the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Pacific Gas and Electric Company an exemption from the requirement of 10 CFR 50.71(e)(4) to submit updates to the DCNPP FSAR within 6 months of each outage. The licensee will be required to submit updates to the DCNPP FSAR within six months after each Unit 2 refueling outage. With the current length of fuel cycles, FSAR updates would be submitted every 24 months, but not to exceed 24 months from the last submittal.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant effect on the environment (63 FR 10654).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 12th day of March 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–6974 Filed 3–17–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of March 16, 23, 30, and April 6, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 16

Thursday, March 19

2:30 p.m. Affirmative Session (PUBLIC MEETING)

A. Petition for Commission Review of Director's Decision on Paducah Seismic Upgrades Certificate Amendment Request

Week of March 23—Tentative

Monday, March 23

2:30 p.m. Briefing on MOX Fuel Fabrication Facility Licensing (PUBLIC MEETING) (Contact: Ted Sherr, 301–415–7218)

Thursday, March 26

11:00 a.m. Briefing by Executive Branch (Closed—Ex. 1)

2:00 p.m. Briefing on Recent Research Program Results (PUBLIC MEETING)

3:30 p.m. Affirmation Session (PUBLIC MEETING) (if needed)

Week of March 30—Tentative

Monday, March 30

2:00 p.m. Briefing by Nuclear Waste Technical Review Board (NWTRB) (PUBLIC MEETING)

Tuesday, March 31

10:00 a.m. Briefing on Fire Protection (PUBLIC MEETING) (Contact: Tad Marsh, 301–415–2873)

3:00 p.m. Briefing by Organization of Agreement States an Status of IMPEP Program (PUBLIC MEETING) (Contact: Richard Bangart, 301–415–3340)

Thursday, April 2

1:00 p.m. Meeting with Advisory Committee on Reactor Safeguards (ACRS) (PUBLIC MEETING) (Contact: John Larkins, 301–415–7360

2:30 p.m. Briefing on Improvements to the Senior Management Meeting Process (PUBLIC MEETING) (Contact: Bill Borchard, 301–415–1257)

Friday, April 3

10:30 a.m. Affirmation Session (PUBLIC MEETING)

Week of April 6

There are no meetings the week of March 6.

Note: The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the office of the Secretary, Attn: Operations Branch, Washington, 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: March 13, 1998.

William M. Hill, Jr.,

Secy, Tracking Officer, Office of the Secretary.

[FR Doc. 98–7064 Filed 3–13–98; 4:19 pm]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

March 1, 1998.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of March 1, 1998, of 24 rescission proposals and eight deferrals contained in two special messages for FY 1998. These messages were transmitted to Congress on February 3 and February 20, 1998.

Rescissions (Attachments A and C)

As of March 1, 1998, 24 rescission proposals totaling $20 million had been transmitted to the Congress. Attachment C shows the status of the FY 1998 rescission proposals.

Deferrals (Attachments B and D)

As of March 1, 1998, $3,606 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1998.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the editions of the **Federal Register** cited below:

63 FR 7004, Wednesday, February 11, 1998

63 FR 10076, Friday, February 27, 1998

Franklin D. Raines,

Director.

Attachments

ATTACHMENT A.—STATUS OF FY 1998 RESCISSIONS

[In millions of dollars]

	Budgetary resources
Rescissions proposed by the President	20.1
Rejected by the Congress	
Amounts rescinded	
Currently before the Congress	20.1

ATTACHMENT B.—STATUS OF FY 1998 DEFERRALS

[In millions of dollars]

	Budgetary resources
Deferrals proposed by the President	4,833.0
Routine Executive releases through March 1, 1998 (OMB/Agency releases of $1,227.5 million.)	1,227.5
Overturned by the Congress	
Currently before the Congress	3,605.5

ATTACHMENT C.—STATUS OF FY 1998 RESCISSION PROPOSALS—AS OF MARCH 1, 1998

[Amounts in thousands of dollars]

Agency/bureau/account	Rescission No.	Amounts pending before Congress		Date of message	Previously withheld and made available	Date made available	Amount rescinded	Congressional action
		Less than 45 days	More than 45 days					
Department of Agriculture								
Agricultural Research Service:								
Agricultural Research Service.	R98–1	223		2–20–98				
Animal and Plant Health Inspection Service:								
Salaries and expenses	R98–2	350		2–20–98				
Food Safety and Inspection Service:								
Salaries and expenses	R98–3	502		2–20–98				
Grain Inspection, Packers and Stockyards Administration:								
Salaries and expenses	R98–4	38		2–20–98				
Agricultural Marketing Service:								
Marketing services	R98–5	25		2–20–98				
Farm Service Agency:								
Salaries and expenses	R98–6	1,080		2–20–98				

ATTACHMENT C.—STATUS OF FY 1998 RESCISSION PROPOSALS—AS OF MARCH 1, 1998—Continued

[Amounts in thousands of dollars]

Agency/bureau/account	Rescission No.	Amounts pending before Congress		Date of message	Previously withheld and made available	Date made available	Amount rescinded	Congressional action
		Less than 45 days	More than 45 days					
Natural Resources Conservation Service:								
Conservation operations	R98–7	378	.....	2–20–98	.....	.....	.....	.....
Rural Housing Service:								
Salaries and expenses ..	R98–8	846	.....	2–20–98	.....	.....	.....	.....
Food and Nutrition Service:								
Child nutrition programs	R98–9	114	.....	2–20–98	.....	.....	.....	.....
Forest Service:								
National forest systems ..	R98–10	1,094	.....	2–20–98	.....	.....	.....	.....
Reconstruction and construction.	R98–11	30	.....	2–20–98	.....	.....	.....	.....
Forest and rangeland research.	R98–12	148	.....	2–20–98	.....	.....	.....	.....
State and private forestry	R98–13	59	.....	2–20–98	.....	.....	.....	.....
Wildland fire management.	R98–14	148	.....	2–20–98	.....	.....	.....	.....
Department of the Interior								
Bureau of Land Management:								
Management of lands and resources.	R98–15	1,188	.....	2–20–98	.....	.....	.....	.....
Oregon and California grant lands.	R98–16	2,500	.....	2–20–98	.....	.....	.....	.....
Bureau of Reclamation:								
Water and related resources.	R98–17	532	.....	2–20–98	.....	.....	.....	.....
Bureau of Mines:								
Mines and minerals	R98–18	1,605	.....	2–20–98	.....	.....	.....	.....
United States Fish and Wildlife Service:								
Construction	R98–19	1,188	.....	2–20–98	.....	.....	.....	.....
National Park Service:								
Construction	R98–20	1,638	.....	2–20–98	.....	.....	.....	.....
Bureau of Indian Affairs:								
Construction	R98–21	737	.....	2–20–98	.....	.....	.....	.....
Department of Transportation								
Office of the Secretary:								
Payments to air carriers	R98–22	2,499	.....	2–20–98	.....	.....	.....	.....
Payments to air carriers (Airport and airway trust fund).	R98–23	1,000	.....	2–20–98	.....	.....	.....	.....
Maritime Administration:								
Maritime guaranteed loan (Title XI) program account.	R98–24-	2,138	.....	2–20–98	.....	.....	.....	.....
Total, rescissions		20,060	0	.....	0	.....	0	.....

ATTACHMENT D.—STATUS OF FY 1998 DEFERRALS—AS OF MARCH 1, 1998

[Amounts in thousands of dollars]

Agency/bureau/account	Deferral No.	Amounts transmitted		Date of message	Releases (–)		Congressional action	Cumulative adjustments	Amount deferred as of 3–1–98
		Original request	Subsequent change (+)		Cumulative OMB/agency	Congressionally required			
Funds Appropriated to the President									
International Security Assistance:									

ATTACHMENT D.—STATUS OF FY 1998 DEFERRALS—AS OF MARCH 1, 1998—Continued

[Amounts in thousands of dollars]

Agency/bureau/account	Deferral No.	Amounts transmitted		Date of message	Releases (−)		Congressional action	Cumulative adjustments	Amount deferred as of 3–1–98
		Original request	Subsequent change (+)		Cumulative OMB/agency	Congressionally required			
Economic support fund and International Fund for Ireland.	D98–1	2,330,098	.....	2–3–98	1,164,145	.....	.....	.....	1,165,953
International military education and training.	D98–2	43,300	.....	2–3–98	41,900	.....	.....	.....	1,400
Foreign military financing program.	D98–3	1,483,903	.....	2–3–98	1,200	.....	.....	.....	1,482,703
Foreign military financing loan program.	D98–4	60,000	.....	2–3–98	.....	.....	.....	.....	60,000
Foreign military financing direct loan financing account.	D98–5	657,000	.....	2–3–98	.....	.....	.....	.....	657,000
Agency for International Development:									
International disaster assistance, Executive.	D98–6	135,697	.....	2–3–98	20,250	.....	.....	.....	115,447
Department of State									
Other:									
United States emergency refugee and migration assistance fund.	D98–7	115,640	.....	2–3–98	.....	.....	.....	.....	115,640
Social Security Administration									
Limitation on administrative expenses.	D98–8	7,369	.....	2–3–98	.....	.....	.....	.....	7,369

ATTACHMENT D.—STATUS OF FY 1998 DEFERRALS—AS OF MARCH 1, 1998—Continued

[Amounts in thousands of dollars]

Agency/bureau/account	Deferral No.	Amounts transmitted		Date of message	Releases (–)		Congressional action	Cumulative adjustments	Amount deferred as of 3–1–98
		Original request	Subsequent change (+)		Cumulative OMB/agency	Congressionally required			
Total, Deferrals.		4,833,007	0	.....	1,227,495	.....	.....	0	3,605,512

[FR Doc. 98–6944 Filed 3–17–98; 8:45 am]
BILLING CODE 3110–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request Extension of Standard Form 113–G

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22,1995), this notice announces that OPM intends to submit a request to the Office of Management and Budget (OMB) for renewal of authority to collect data for the Monthly Report of Full-time Equivalent/Work-Year Civilian Employment (Standard Form 113–G). The data collected are used by OMB and OPM to: (1) monitor agencies' progress in increasing part-time employment; (2) aid OMB and the President in making decisions on agencies' budget appropriations for the next fiscal year; and (3) monitor agency work year usage under total approved FTE levels during the current fiscal year. One hundred thirty-one Federal agencies provide monthly reports to OPM. It takes 2 hours to complete one report, for an annual total information collection burden of 3,144 hours.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of the clearance package, call James M. Farron, Reports and Forms Manager, on (202) 418–3208, or by e-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received on or before May 18, 1998.

ADDRESSES: Send or deliver comments to: May Eng, U.S. Office of Personnel Management, 1900 E Street, NW., Room 7439, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: May Eng, (202) 606–2684.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–6937 Filed 3–17–98; 8:45 am]
BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Information Collection; Court Orders Affecting Retirement Benefits

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of an information collection. Court Orders Affecting Retirement Benefits, requires former spouses of Federal employees to provide specific information needed for OPM to make court-ordered benefit payments. This information is needed to identify affected employees and to certify that the court-order remains in effect.

Approximately 12,000 former spouses apply for benefits based on court orders annually. We estimate it takes approximately 6 minutes to apply. The annual burden is 1,200 hours.

Comments are particularly invited on:

—whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received on or before May 18, 1998.

ADDRESSES: Send or deliver comments to—Mary Ellen Wilson, Acting Chief, Retirement Policy Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 4351, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–6939 Filed 3–17–98; 8:45 am]
BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request Optional Form 306

AGENCY: Office of Personnel Management.

ACTION: Proposed collection; Comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and 5 CFR 1320.5 (a) (i) (iv), this notice announces that OPM has submitted to the Office of Management and Budget (OMB) a request for clearance of an information collection.

The Declaration for Federal Employment, Optional Form 306, is used by OPM and other Federal agencies to collect information to determine the individual's acceptability for Federal employment and enrollment status in the Government's Life Insurance program.

It is estimated that 435,000 individuals will respond annually for a total burden of 118,500 hours. To obtain copies of this proposal contact James M. Farron at 202–418–3208 or by E-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received on or before April 17, 1998.

ADDRESSES: Send or deliver comments to—

Richard A. Ferris, Office of Personnel Management, Investigations Service, 1900 E. Street N. W., Room 5416, Washington, D. C. 20415,
and
Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, N. W., Room 10235, Washington, D. C. 20503.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–6938 Filed 3–17–98; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Electro-Optical Systems Corp.; Order of Suspension of Trading

March 13, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Electro-Optical Systems Corporation ("EOSC") because of questions regarding the accuracy of statements, and material omissions, concerning, among other things, (1) the viability of EOSC's product, a fingerprint device, (2) customer interest in purchasing EOSC's product, and (3) the trading and true value of the common stock of EOSC.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 1:30 p.m. EST, March 13, 1998 through 11:59 p.m. EST, on March 26, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7066 Filed 3–13–98; 4:53]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

International Heritage Inc.; Order of Suspension of Trading

March 13, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of International Heritage, Inc. ("IHIN"), a Raleigh, North Carolina company which holds itself out to be a direct sales organization selling various products, including lines of expensive jewelry, collectibles, luggage, golf equipment and long distance service, because of questions regarding the accuracy of statements concerning, among other things, the return investors could expect to receive on their investment, the regulatory background of the company and the background of its president.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 1:00 P.M. EST, March 13, 1998 through 11:59 P.M. EST, on March 26, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–7067 Filed 3–13–98; 4:53 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39739; File No. SR–OCC–97–05]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Early Warning Notices

March 10, 1998.

On May 15, 1997, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–OCC–97–05) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on August 25, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change revises OCC's Rule 303 to expand the circumstances under which a clearing member is to provide OCC with early warning notices. Currently, Rule 303 requires a clearing member to provide OCC with an early warning notice if the clearing member experiences certain enumerated financial difficulties or if the clearing member has provided any notice required pursuant to Commission Rule 15c3–1(e)(1)(iv).[3] Rule 303 is expanded to explicitly provide that a clearing member must immediately notify an officer of OCC of any notice that such clearing member gives, is required to give, or receives from any regulatory organization regarding any financial difficulty affecting the clearing member or of any failure by the clearing member to be in compliance with the financial responsibility rules or capital requirements of any regulatory organization. As proposed, Rule 303 requires the clearing member to promptly confirm such notice in writing. In addition, the language of paragraphs (b) and (c) of Rule 303 [previously paragraphs (a) and (b)] is revised to conform to the requirement in new paragraph 303(a) that an officer of OCC be immediately notified by telephone of any of the events described in those paragraphs.

The term "regulatory organization" is defined in proposed Interpretations and Policies .01 to mean (i) the Commission and any other federal or state regulatory agency having jurisdiction over the clearing member including the Commodity Futures Trading Commission ("CFTC") in the case of a clearing member which is subject to the jurisdiction of the CFTC; (ii) any self-regulatory organization as defined in Section 3(a) of the Act[4] of which the clearing member is a member or participant; (iii) any clearing

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 38948 (August 19, 1997), 62 FR 44998.

[3] 17 CFR 240.15c3–1(e)(1)(iv). Rule 15c3–1(e) requires broker-dealers to provide written notice to the Commission in connection with the withdrawal of certain levels of equity capital.

[4] 15 U.S.C. 78c(a).

organization as defined in Regulation Section 1.3(d) under the Commodity Exchange Act,[5] board of trade, contract market, and registered futures association of which the clearing member is a member or participant; and (iv) in the case of a non-U.S. clearing member, any non-U.S. regulatory agency or instrumentality or independent organization or exchange having jurisdiction over the non-U.S.clearing member or of which the non-U.S. clearing member is a member or participant.

These amendments will enhance the effectiveness of OCC's financial surveillance program by providing OCC with material information, some of which it currently does not receive, concerning a clearing member's financial condition. For example, many of OCC's clearing members are also registered as futures commission merchants ("FCMs") under the Commodity Exchange Act and as such are subject to the financial reporting requirements of the CFTC and the early warning notice requirements of commodity self-regulatory organizations. Because of differences in the early warning notice criteria used by the commodity regulatory organizations and those used by the securities regulatory organizations, events triggering early warning notice requirements for an FCM (*e.g.*, net capital below a specified percentage of segregated funds) would not necessarily create an early warning notice requirement for a registered broker-dealer. Consequently, under OCC's current rules, a situation could occur that would require a clearing member to give early warning notice to its commodity regulatory authority but would not require the clearing member to give notice to OCC. Accordingly, requiring a clearing member to provide OCC with early warning notices which it is required to provide to any other regulatory organization should assist OCC in assessing the ongoing creditworthiness of its clearing members.

There is potential overlap between the requirements of new paragraph (a) and existing paragraph (c) [previously paragraph (b)] whereby a non-U.S. clearing member might be required to notify OCC of a notice from a non-U.S. regulatory agency pursuant to both paragraphs.[6] However, the overlap should not impose an inappropriate burden on non-U.S. clearing members because the requirement to notify OCC of an event can be satisfied by the same notice to OCC even if the requirement arises under both paragraphs.

II. Discussions

Section 17A(b)(3)(F) of the Act[7] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible. The Commission believes the rule change is consistent with OCC's obligation to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible because it increases the effectiveness of OCC's financial surveillance program. Revisions to Rule 303 concerning early warning notices enables OCC to receive material information concerning a clearing member's financial condition that it does not receive currently. The early warning notices should assist OCC in assessing the ongoing creditworthiness of its clearing members and thus should help OCC to safeguard securities and funds in OCC's custody or control.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–97–05) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–6977 Filed 3–17–98; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 1.3(d).

[6] Paragraph (c) of Rule 303 currently provides that an exempt non-U.S. clearing member must notify OCC promptly of any violation on its part of the rules or regulations of its non-U.S. regulatory agency or any notice received from such agency that alleges a violation of such rules or regulations, informs the non-U.S. clearing member that it may violate such rules or regulations, or informs the non-U.S. clearing member that it has triggered any provision relating to early warning notices contained in such rules or regulations.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39744; File No. SR–PHLX–98–11]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. to Amend Its Examination Fees to Pass Through Costs

March 11, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 17, 1998, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Rule 19b–4,[2] proposes to amend its examination fee to include a provision which will allow the Phlx to pass through to a member or participant organization the costs incurred from contracting with another SRO to conduct an examination on behalf of the Phlx. The text of the proposed rule change is available at the Office of the Secretary, the Phlx or at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the SRO included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The SRO has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Section 17(b) of the Act,[3] the Exchange administers its examination program, which requires broker-dealers designated to an SRO to be examined for compliance with applicable financial responsibility rules on a periodic basis. The Exchange conducts reviews of organizations for which the Exchange is the Designated Examining Authority. The reviews focus on an organization's compliance with applicable financial and recordkeeping requirements including net capital, books and records maintenance, Regulation T and financial reporting requirements. Effective January 1, 1995, the Phlx adopted a $1,000 per month examination fee applicable to member and participant organizations for which the Phlx acts as a Designated Examining Authority.[4] The fee was adopted due to the substantial expense and time involved in conducting a proper examination of the member firms.[5]

In the past, the Exchange has entered into agreements with other SROs to conduct examinations of firms that are solely members of the Phlx.[6] The Exchange may contract with another SRO to perform an examination for various reasons, such as the location of the firm or where the type of business in which the firm is engaged may be more suited to another SRO's area of expertise. Generally, the Exchange only enters into such agreements where the firm designated to the Phlx has a retail customer base. Certain SROs have the resources and the expertise to examine firms that carry out customer accounts. Therefore, those SROs have a higher degree of experience in examination requirements pertinent to carrying customer accounts (e.g., sales practices, reserve and possession/control requirements).

However, these arrangements typically require that the Phlx pay 2.5 times the median salary for examiners and supervisors of the contracted SRO, resulting in a significant cost to the Exchange. Therefore, in the event that the Phlx determines to refer an examination to another SRO, the proposal would allow the Exchange to collect its costs directly from the member or participant organization. Members who are required to pay the pass through costs of an examination would not be required to pay the $1,000 examination fee charged to those members for which the Exchange conducts the examination.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers 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 the Exchange's members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (e)(2) of Rule 19b–4 thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx.

All submissions should refer to File No. SR–Phlx–98–11 and should be submitted by April 8, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–6976 Filed 3–17–98; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. § 78q(b).

[4] *See* Securities Exchange Act Release No. 35091 (December 12, 1994), 59 FR 65558 (December 20, 1994) (SR–PHLX–94–66).

[5] There are a number of exemptions to the fee including, inactive organizations, organizations that operate from the trading floors, organizations that incur Phlx or Stock Clearing Corporation transaction fees on a monthly basis and organizations affiliated with an exempt active organization. Any organization that can demonstrate that it has derived at least 25% of its revenues in a calendar quarter from floor trading activity will be deemed to be "operating from the trading floors" and therefore, is exempt from the $1,000 per month examination fee. *See* Securities Exchange Act Release No. 38416 (March 18, 1997), 62 FR 14176 (March 25, 1997) (SR–PHLX–97–10).

[6] These agreements are entered into pursuant to Rule 17d–2 under the Act. 17 CFR 240.17d–2.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(e)(2).

[11] 15 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–98–3553]

Marine Transportation System: Waterways, Ports, and Their Intermodal Connections

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings; request for comments.

SUMMARY: The Coast Guard and the Maritime Administration, together with several other federal agencies, are holding seven two-day regional listening sessions to receive information concerning the current state and future needs of the U.S. marine transportation system—the waterways, ports, and their intermodal connections. This notice announces the dates and locations of the remaining six listening sessions. These listening sessions are a first step in developing a customer-based strategy to work together to ensure waterways,

ports, and their intermodal connections meet user and public expectations for the 21st century. The information provided at the regional listening sessions will be presented at a national conference in the fall of 1998.

DATES: The open forum public meetings will be held on the following dates:

Oakland, CA, April 14, 1998 from 9 a.m. to 3 p.m.
New York, NY, April 21, 1998 from 9 a.m. to 3 p.m.
Cleveland, OH, April 29, 1998 from 9 a.m. to 3 p.m.
St. Louis, MO, May 5, 1998 from 9 a.m. to 3 p.m.
Charleston, SC, May 13, 1998 from 9 a.m. to 3 p.m.
Portland, OR, May 19, 1998 from 9 a.m. to 3 p.m.

Comments must be received by the Docket Management Facility no later than June 30, 1998.

ADDRESSES: The open forum public meetings will be held at the following locations:

Oakland, CA—Port of Oakland, 2nd Floor Board Room, 320 Port of New Orleans Place, LA 70130.
New York, NY—Seamen's Church Institute, 241 Water St., New York, NY 10038.
Cleveland, OH—Windows on the River, Powerhouse-Nautica, 2000 Sycamore St., Cleveland, OH 44113.
St. Louis, MO—Robert A. Young Federal Building, 2nd Floor Auditorium, 1222 Spruce Street, St. Louis, MO 63103.
Charleston, SC—South Carolina State Ports Authority, Passenger Terminal, 186 Concord St., Charleston, SC 29413.
Portland, OR—Eastside Federal Complex Auditorium, 911 NE 11th Ave., Portland, OR 97232.

You may mail comments to the Docket Management Facility, (USCG–1998–3553), U.S. Department of Transportation (DOT), 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except holidays.

The Docket Management Facility maintains the public docket for this notice. Comments will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the above address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also electronically access the public docket for this notice on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For information on the public docket, contact Carol Kelley, Coast Guard Dockets Team Leader or Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, telephone 202–366–9329; for information concerning the notice of meeting contact Joyce Short, U.S. Coast Guard (G-M–2), 2100 Second St., SW, Washington, DC 20593–0001, telephone 202–267–6164.

SUPPLEMENTARY INFORMATION:

Other Regional Listening Sessions

The first regional listening session was announced in the **Federal Register** (63 FR 10257). This notice announces the remaining six regional listening sessions.

Request for Comments

We encourage interested persons to participate in this information-gathering initiative by submitting written data, views, or other relevant documents. Persons submitting comments should include their names and addresses, identify this notice (USCG–1998–3553), and the reasons for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ x 11 inches, suitable for copying and electronic filing to the DOT Docket Management Facility at the address under **ADDRESSES.** If you want acknowledgment of receipt of your comments, enclose a stamped, self-addressed post card or envelope.

Comments received, whether submitted in writing to the docket, or presented during the regional listening sessions, will be considered in preparing the agenda of a national conference in the fall 1998.

Background

The marine transportation system includes waterways, ports, and their intermodal connections with highways, railways, and pipelines. The marine transportation system links the United States to overseas markets and is important to national security interests. Excluding Mexico and Canada, over 95% of U.S. foreign trade by tonnage is shipped by sea, and 14% of U.S. intercity freight is transported by water. Forecasts show that U.S. foreign ocean borne trade is expected to more than double by the year 2020; and commuter ferries, recreational boating and other recreational uses of the waterway are expected to increase, placing even greater demands on the marine transportation system.

Many federal agencies, state and local governments, port authorities, and the private sector share responsibility for the marine transportation system. The economic, safety, and environmental implications of aging infrastructure, inadequate channels, and congested intermodal connections will become more critical as marine traffic volume increases.

To meet these challenges, the Department of Transportation is pursuing the development of a customer-based strategy, in partnership with others responsible for waterways, ports, and their intermodal connections. The strategy will be aligned with the principles of the National Performance Review, will provide better delivery of Federal services, and provide a means to improve the nation's waterways, ports, and their intermodal connections to meet user needs and public expectations for the 21st century.

The regional listening sessions will build upon information from other Department of Transportation-led outreach activities that identified issues of significance to the marine transportation system. For example, in 1997 workshops addressed the impact of larger container ships; in 1994 outreach sessions led to an action plan to improve the dredging process in the United States; and in 1993 port visits identified land-side intermodal access impediments.

The Secretary of the Department of Transportation will host a national conference in the fall of 1998. That conference will address key issues raised by the regional listening sessions and written comments. The purpose of the national conference will be to address these issues, develop solutions, and explore potential strategies to implement these solutions. The conference will also develop a vision for an improved and more cooperative approach to the delivery of Federal services.

Objective and Issues

The objective of these regional listening sessions and the request for comments is to receive information from the general public and user perspective to identify concerns about the current state and future needs of our waterways, ports, and their intermodal connections. We need to identify the most critical issues that should be addressed to meet the challenges likely to be faced by our marine transportation system. We particularly need to identify those areas where the Federal government should improve existing services or provide future assistance in addressing these issues.

We specifically are interested in information on the following questions for each component of the marine

transportation system: waterways, the ports, and their intermodal connections:

- Currently, what elements work best in your region and why?
- Currently, what are the most significant problems in your region?
- What are the obstacles to resolving these problems?
- What is your vision of a marine transportation system that will accommodate the growing and competing demands of the future?
- What changes, additions, and types of assistance are needed to achieve your vision?

Format of Regional Listening Sessions

The first day of each regional listening session will be an open forum to receive views and opinions from the public concerning the current state and future needs of our waterways, ports and their intermodal connections. Persons wishing to make oral presentations should notify the person listed under **FOR FURTHER INFORMATION CONTACT** no later than the day before the meeting. Written material may be submitted before, during, or after the meeting. Speakers are encouraged to provide a written copy of their comments since time limits may be needed to accommodate all speakers, and summary notes will be made of oral comments.

The second day of each regional listening session will be a structured focus group format. A representative cross section from the region's ports, terminals, stevedores, pilots, vessel operators, railroads, truckers, environmental community, and others will be selected to provide expert views on the current state and future needs of our marine transportation system.

A summary of each regional listening will be placed in the public docket and will be available for public review and comment.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the person under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: March 13, 1998.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–7034 Filed 3–17–98; 8:45 am]

BILLING CODE 4910–14–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (98–02–C–00–IAD) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the Dulles International Airport, Chantilly, VA

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 the Dulles 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 April 17, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Terry Page, Manager, Washington Airports District Office, 101 West Broad Street, Suite 300, Falls Church, Virginia 22046.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James A. Wilding, General Manager of the Metropolitan Washington Airports Authority, at the following address: Metropolitan Washington Airports Authority, 44 Canal Center Plaza, Alexandria, Virginia 22314.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Metropolitan Washington Airports Authority under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Page, Manager, Washington Airports District Office 101 West Broad Street, Suite 300 Falls Church, Virginia 22046. 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 Dulles 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).

On January 22, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Metropolitan Washington Airports 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 29, 1998.

The following is a brief overview of the application.

Application number: 98–02–C–00–IAD.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 2005.

Proposed charge expiration date: May 1, 2008.

Total estimated PFC revenue: $81,748,000.

Brief description of proposed projects:

—Construct Regional Airline Midfield Concourse
—Construct Pedestrian Connector to North Flank Garage
—Construct Outbound Baggage System in the Main
—Interim Financing Cost

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 On Demand Air Taxis filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Metropolitan Washington Airports Authority.

Issued in Jamaica, New York on March 11, 1998.

Thomas Felix,

Planning and Programmming Branch, Airports Division, Eastern Region.

[FR Doc. 98–7029 Filed 3–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on PFC Application 98–04–C–00–SEA To Impose Only, Impose and Use, and Use Only, the Revenue From a Passenger Facility Charge (PFC) at Seattle-Tacoma International Airport; Submitted by the Port of Seattle, Seattle, WA

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 only, impose and use, and use only, the revenue from a PFC at Seattle-Tacoma International Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before April 17, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Gina Marie Lindsey, Director, Aviation Division, at the following address; Port of Seattle, P.O. Box 68727, Seattle, WA 98168.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Seattle-Tacoma International Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Vargas, (425) 227–2660; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, WA 98055–4056. 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 98–04–C–00–SEA to impose only, impose and use, and use only, the revenue from a PFC at Seattle-Tacoma International Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On March 11, 1998, the FAA determined that the application to impose only, impose and use, and use only, the revenue from a PFC submitted by the Port of Seattle, Seattle, Washington, 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 June 9, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 8, 1998.

Proposed charge expiration date: January 1, 2023.

Total estimated net PFC revenue: 1,086,966,000.

Brief description of proposed projects: Use Only Projects: Regional ARFF Training Facility (AP4–1); Runway 16L–16R Safety Area Improvements (AP4–2); Passenger Conveyance System (AP4–3); Impose and Use Projects: Third Runway (AP4–4); Concourse "A" Expansion project, (AP4–5); Access Roadway Improvements Impose Only Projects: (AP4–6); Security System Upgrade (AP4–7); Noise Remedy Program (AP4–8); Airfield Pavement and Infrastructure Improvements (AP4–9); Terminal Infrastructure Upgrades (AP4–10).

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Seattle-Tacoma International Airport.

Issued in Renton, Washington on March 11, 1998.

George K. Saito,

Acting Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 98–7028 Filed 3–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3593]

Decision That Nonconforming 1996 Audi Avant Quattro Passenger Cars Are Eligible for Importation

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

ACTION: Notice of decision by NHTSA that nonconforming 1996 Audi Avant Quattro passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1996 Audi Avant Quattro passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the 1996 Audi A6 Quattro), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective as of March 18, 1998.

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.**

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) petitioned NHTSA to decide whether 1996 Audi Avant Quattro passenger cars are eligible for importation into the United States. NHTSA published notice of the petition under Docket No. NHTSA 97–3157 on December 1, 1997 (62 FR 63600) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of the petition, from Volkswagen of America, Inc. ("Volkswagen"), the United States representative of Audi AG, the vehicle's manufacturer. In this comment,

Volkswagen disputed Champagne's claim that the 1996 Audi Avant Quattro complies with the Bumper Standard found in 49 CFR Part 581. Volkswagen asserted that the bumpers and their supporting structure on the 1996 Audi Avant Quattro do not conform to the standard. In order to achieve conformance, Volkswagen contended that the vehicle's frame rails must be modified, metallic impact absorbers must be added, and the bumper components must be changed.

Additionally, Volkswagen stated that the 1996 Audi A6 Quattro has been designated a high theft line vehicle under the Theft Prevention Standard at 49 CFR Part 541. Volkswagen contended that the 1996 Audi A6 Quattro received an exemption from the parts marking requirements of the standard on the basis that it is equipped with an anti-theft system which differs from the system found on the 1966 Audi Avant Quattro. As a consequence, Volkswagen asserted that the 1966 Audi Avant Quattro would have to be modified prior to importation so that it is equipped with the same anti-theft system as that found on the 1966 Audi A6 Quattro.

NHTSA accorded Champagne an opportunity to respond to Volkswagen's comment. In its response, Champagne stated that it compared the part numbers for the bumpers and associated structural components on the 1966 Audi Avant Quattro to those on the 1966 Audi A6 Quattro, and found them to be all identical with the exception of those for the impact absorbers. As a consequence, Champagne stated that it would replace any impact absorbers that do not have identical part numbers to those found on the 1966 Audi A6 Quattro. Champagne additionally asserted that it is not necessary to make any frame rail modifications, to perform structural welding, or to make any other component changes to conform the 1966 Audi Avant Quattro to the Bumper Standard. With respect to the Theft Prevention Standard issue raised by Volkswagen, Champagne stated that all 1996 Audi Avant Quattros will be modified prior to importation so that they conform to the standard in a manner that is identical or substantially similar to that of the 1966 Audi A6 Quattro.

NHTSA believes that Champagne's response adequately addresses the comments that Volkswagen has made regarding the petition. NHTSA further notes that those comments raise no issues regarding the capability of the vehicle to comply with the Federal motor vehicle safety standards. Accordingly, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–238 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1996 Audi Avant Quattro passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 1996 Audi A6 Quattro passenger cars originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

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: March 13, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–6994 Filed 3–17–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Program Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before April 17, 1998.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, Room 8421, DHM–30, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the application (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW. Washington, DC 20590.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on March 12, 1998.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12044–N	RSPA–98–3612	Reagent Chemical & Research, Inc., Houston, TX.	49 CFR 179.3	To authorize the transportation in commerce of DOT 111A100W5 tank cars that exceed the authorized load capacity for use in transporting hydrochloric acid, Class 8. (mode 2)

NEW EXEMPTIONS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12045–N	RSPA–98–3613	Jefferson Smurfit Corp., Fernandina Beach, FL.	49 CFR 174.67 (i) & (j) ...	To authorize tank cars loaded with chlorine to stand with unloading connections attached after unloading is completed and remain attached to transfer connection without the physical presence of an unloader. (mode 2)
12046–N	RSPA–98–3614	Univ. of Colorado Health Sciences Center, Denver, CO.	49 CFR 171 to 178	to authorize the transportation in commerce of various hazardous materials in small quantities inside lab packs without required markings and labelling as essentially non-regulated. (mode 1)

Note: In **Federal Register** Vol. 63, No. 35, Monday, February 13, 1998, Page 9043, Application No. 12038–N, SPA–98–3461 for Duracool Limited, the summary should have appeared as Regulations Affected: 49 CFR 173.304(a), 173.304(d)(3)(ii), 172.301 (a) & (c): To authorize the transportation in commerce of a Division 2.1 liquefied refrigerant gas, in DOT Specification 2Q containers, at a charging pressure in excess of the authorized maximum.

[FR Doc. 98–7025 Filed 3–17–98; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g., to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before April 2, 1998.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

Application No.	Docket No.	Applicant	Modification of exemption
7835–M	.....	Matheson Gas Products, East Rutherford, NJ (See Footnote 1)	7835
8096–M	.....	Scott High Pressure Technology, Plumsteadville, PA (See Footnote 2)	8096
11270–M	.....	The Specialty Chemicals Div. of B.F. Goodrich, Co., Cleveland, OH (See Footnote 3)	11270
11998–M	RSPA–97–3246	Union Tank Car Co., East Chicago, IN (See Footnote 4)	11998
12018–M	RSPA–98–3348	MVE, Inc., New Prague, MN (See Footnote 5)	12018
12041–M	RSPA–98–3480	General Electric Plastics, Pittsfield, MA (See Footnote 6)	12041

(1) To modify the exemption to provide for an additional pallet design for use in transporting compressed gas cylinders.
(2) To modify the exemption to provide for an alternative material to be used in manufacturing non-DOT specification steel cylinders for use in transporting Division 2.2 material.
(3) To modify the exemption to provide for unloading valves to remain open when rail cars are standing with unloading connections attached.
(4) To reissue the exemption originally issued on an emergency basis to authorize the transportation of DOT Specification 105J200W tank cars transporting various hazardous materials not meeting SP B74.
(5) To reissue the exemption originally issued on an emergency basis to authorize the bulk transportation of refrigerated liquids in cargo tanks when mounted on motor vehicles and provide for additional tanks.
(6) To reissue the exemption originally issued on an emergency basis to use an alternate method of testing of certain cylinders for transporting Division 2.3 material.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on March 13, 1998.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

[FR Doc. 98–7026 Filed 3–17–98; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–531 (Sub–No. 1X)]

Pioneer Valley Railroad Company, Inc.—Abandonment Exemption—in Hampshire County, MA

Pioneer Valley Railroad Company (PVRR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon an approximately 4.6-mile line of railroad from milepost 9.4 near Easthampton to milepost 14.0 at Mount Tom, in Hampshire County, MA. The line traverses United States Postal Service Zip Code 01027.

PVRR has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic formerly handled on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 17, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by March 30, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 7, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Thomas J. Litwiler, Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

PVRR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 23, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), PVRR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by PVRR's filing of a notice of consummation by March 18, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: March 10, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–6852 Filed 3–17–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 98–23]

Revocation of Customs Broker License

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Broker license revocation.

Notice is hereby given that the Commissioner of Customs, pursuant to Section 641, Tariff Act of 1930, as amended, (19 U.S.C. 1641), and Parts 111.52 and 111.74 of the Customs Regulations, as amended (19 CFR 111.52 and 111.74), is canceling the following Customs broker licenses without prejudice.

Port	Individual	License No.
New York	Warner Forwarders, Inc	14042
New York	Columbia Shipping Inc	04416
Chicago	Columbia Shipping Inc	12462
Los Angeles	Columbia Shipping Inc	06300
New York	Laufer Shipping Co., Inc	02972
New York	Automated Cargo Corp	11494
Los Angeles	Sheung Yip Lee dba YSL Customs Broker	12365
Los Angeles	James G. Wiley	01892
Los Angeles	Charles Chow	06004
Los Angeles	Debra Marie Swanson	06474

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25). This fee is scheduled to increase to $1000, effective March 20, 1998.

Port	Individual	License No.
Los Angeles	First Brokerage Int'l Inc	09487
New York	Automated Cargo Corp	11494
New York	Cargo Plus Imports, Inc	13063
Chicago	CHR Green Int'l Co	13485

Dated: March 10, 1998.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 98–7002 Filed 3–17–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2438

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2438, Undistributed Capital Gains Tax Return.

DATES: Written comments should be received on or before May 18, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Undistributed Capital Gains Tax Return.

OMB Number: 1545–0144.

Form Number: 2438.

Abstract: Form 2438 is used by regulated investment companies to compute capital gains tax on undistributed capital gains designated under Internal Revenue Code section 852(b)(3)(D). The IRS uses this information to determine the correct tax.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 8 hr., 59 min.

Estimated Total Annual Burden Hours: 899.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 11, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–6899 Filed 3–17–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1001

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1001, ownership, Exemption, or Reduced Rate Certificate.

DATES: Written comments should be received on or before May 18, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Ownership, Exemption, or Reduced Rate Certificate.

OMB Number: 1545–0055.

Form Number: 1001.

Abstract: Form 1001 is used by owners of certain types of income to report to a withholding agent, both the ownership and any reduced or exempt tax rate under tax conventions or treaties, and, if appropriate, to claim a release of tax withheld at source. The withholding agent uses the information to determine the appropriate withholding.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 6 hr., 39 min.

Estimated Total Annual Burden Hours: 665,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 11, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–6900 Filed 3–17–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2032

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2032, Contract Coverage Under Title II of the Social Security Act.

DATES: Written comments should be received on or before May 18, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Contract Coverage Under Title II of the Social Security Act.

OMB Number: 1545–0137.

Form Number: 2032.

Abstract: U.S. citizens and resident aliens employed abroad by foreign affiliates of American employers are exempt from social security taxes. Under Internal Revenue Code section 3121(l), American employers may file an agreement to waive this exemption and obtain social security coverage for U.S. citizens and resident aliens employed abroad by their foreign affiliates. Form 2032 is used for this purpose.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 160.

Estimated Time Per Respondent: 2 hr., 48 min.

Estimated Total Annual Burden Hours: 448.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 11, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–6901 Filed 3–17–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 970

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 970, application To Use LIFO Inventory Method.

DATES: Written comments should be received on or before May 18, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application To Use LIFO Inventory Method.

OMB Number: 1545–0042.

Form Number: 970.

Abstract: Form 970 is filed by individuals, partnerships, trusts, estates, or corporations to elect to use the last-in first-out (LIFO) inventory method or to extend the LIFO method to additional goods. The IRS uses Form 970 to determine if the election was properly made.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 3,000.

Estimated Time Per Respondent: 14 hr., 9 min.

Estimated Total Annual Burden Hours: 42,450.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 11, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–6902 Filed 3–17–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5300 and Schedule Q (Form 5300)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5300, Application for Determination for Employee Benefit Plan, and Schedule Q (Form 5300), Nondiscrimination Requirements.

DATES: Written comments should be received on or before May 18, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Determination for Employee Benefit Plan (Form 5300), and Nondiscrimination Requirements (Schedule Q Form 5300)).

OMB Number: 1545–0197.

Form Number: Form 5300 and Schedule Q (Form 5300).

Abstract: Internal Revenue Code sections 401(a) and 501(a) set out requirements for qualification of employee benefit trusts and the tax exempt status of these trusts. Form 5300 is used to request a determination letter from the IRS for the qualification of a defined benefit or a defined contribution plan and the exempt status of any related trust. The information requested on Schedule Q (Form 5300) relates to the manner in which the plan satisfies certain qualification requirements concerning minimum participation, coverage, and nondiscrimination.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 500,000.

Estimated Time Per Respondent: 20 hr., 20 min.

Estimated Total Annual Burden Hours: 10,162,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 11, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–6903 Filed 3–17–98; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: The U.S. Advisory Commission on Public Diplomacy will meet on March 18 in Room 6000, 301 4th Street, S.W., Washington, D.C., from 8:30 a.m. to 12:00 noon. At 8:30 a.m. the Commission will hold a panel discussion on how policymakers view foreign opinion research. The panelists are Mr. John Gannon, Director, national Intelligence Council; Ambassador William Courtney, Special Assistant to the President and Senior Director for NIS Affairs, National Security Council; and Mr. David Pollock, Policy Planning Staff, Department of State.

At 10:00 a.m. the Commission will meet with Mr. Geoff Garin, President, Peter D. Hart Research Associates, Inc., to discuss views on opinion research in the polling community. At 11:00 a.m. the Commission will meet with Ms. Ann Pincus, Director, Office of Research, USIA, and Mr. Bill Bell, Director, Office of Research, Bureau of Broadcasting, to discuss USIA's opinion research and international broadcasting research capabilities.

FOR FURTHER INFORMATION: Please call Berry Hayes, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: March 13, 1998.

Rose Royal,

Management Analyst.

[FR Doc. 98–6985 Filed 3–17–98; 8:45 am]

BILLING CODE 8230–01–M

federal register

Wednesday
March 18, 1998

Part II

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Test Procedures and Certification and Enforcement Requirements for Plumbing Products; and Certification and Enforcement Requirements for Residential Appliances; Final Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM/TP–97–600]

RIN 1904–AA71

Energy Conservation Program for Consumer Products: Test Procedures and Certification and Enforcement Requirements for Plumbing Products; and Certification and Enforcement Requirements for Residential Appliances

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule

SUMMARY: The Energy Policy and Conservation Act, as amended (EPCA), requires the Department of Energy (DOE or the Department) to administer an energy and water conservation program for certain major household appliances and commercial equipment, including certain plumbing products. This final rule codifies in Part 430 of Title 10 of the Code of Federal Regulations water conservation standards established in EPCA for showerheads, water closets and urinals; establishes, as directed by EPCA, water conservation standards for faucets and test procedures for faucets, showerheads, water closets and urinals by reference to revised American Society of Mechanical Engineers/ American National Standards Institute (ASME/ANSI) standards; and provides certification and enforcement requirements for plumbing products. This final rule also clarifies and extends the certification and enforcement requirements to all residential covered products.

DATES: This rule is effective April 17, 1998 except for §§ 430.62(a)(4)(vii), 430.62(a)(4)(xiv), 430.62(a)(4)(xv) and 430.62(a)(4)(xvi) which become effective March 18, 1999. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 17, 1998. In addition, as prescribed in Section 323(c)(2) of EPCA, beginning on September 14, 1998 no manufacturer, distributor, retailer, or private labeler may make representations with respect to water use covered plumbing products, except as reflected in tests conducted according to DOE test procedure found in this rule.

ADDRESSES: The Department is incorporating by reference test standards from ASME/ANSI. These standards (which contain both test procedures and water usage standards) are listed below:

1. American Society of Mechanical Engineers/American National Standards Institute Standard A112.19.6–1995, "Hydraulic Requirements for Water Closets and Urinals," Section 7.1.2, subsections 7.1.2.1, 7.1.2.2 and 7.1.2.3; Section 7.1.6; Section 8.2, subsections 8.2.1, 8.2.2, 8.2.3; and Section 8.5.

2. American Society of Mechanical Engineers/American National Standards Institute Standard A112.18.1M–1996, "Plumbing Fixture Fittings," Section 6.5.

Copies of these standards may be viewed at the Department of Energy Freedom of Information Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–3142 between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Copies of the ASME/ANSI Standards may also be obtained by request from the American Society of Mechanical Engineers, Service Center, 22 Law Drive, P.O. Box 2900, Fairfield, NJ 07007, or the American National Standards Institute, 1430 Broadway, New York, NY 10018.

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SUPPLEMENTARY INFORMATION:

I. Introduction

A. Authority

Part B of Title III of the Energy Policy and Conservation Act of 1975, as amended (EPCA), created the Energy Conservation Program for Consumer Products other than Automobiles (Program). The products covered under this program include faucets, showerheads, water closets, and urinals—the subjects of today's final rule.

This program consists essentially of three parts: testing, labeling, and energy and water conservation standards. In the case of faucets, showerheads, water closets, and urinals, the test procedures

measure water use or estimated annual operating cost of these covered products during a representative average use cycle or period of use, as determined by the Secretary, and shall not be unduly burdensome to conduct. EPCA, § 323(b)(3), 42 U.S.C. § 6293(b)(3).

One hundred and eighty days after a test procedure for a product is prescribed or established, no manufacturer, distributor, retailer, or private labeler may make representations with respect to energy use, efficiency, or the cost of energy consumed by products by this rule, except as reflected in tests conducted according to the new or amended DOE test procedure and such representations fairly disclose the results of such tests. Section 323(c)(2) of EPCA, 42 U.S.C. 6293(c)(2). Thus, beginning on [insert date 180 days from the date of publication], representations with respect to the products covered by this rule must be consistent with this amended test procedure.

EPCA states that the procedures for testing and measuring the water use of faucets and showerheads, and water closets and urinals, shall be ASME/ANSI Standards A112.18.1M–1989, and A112.19.6–1990, respectively, but that if ASME/ANSI revises these requirements, the Secretary shall adopt such revisions unless the Secretary determines by rule that the revised test procedures are not satisfactory for determining water use of the covered plumbing products or they are unduly burdensome to conduct. EPCA, § 323(b)(7) and 323(b)(8), 42 U.S.C. § 6293(b)(7) and § 6293(b)(8).

EPCA prescribes water conservation standards for faucets, showerheads, water closets and urinals. It further provides that if the requirements of ASME/ANSI Standard A112.18.1M–1989 or ASME/ANSI Standard A112.19.6–1990 are amended to improve the efficiency of water use, the Secretary shall publish a final rule establishing an amended uniform national standard unless the Secretary determines that adoption of such a standard at the level specified is not (i) technologically feasible and economically justified, (ii) consistent with the maintenance of public health and safety; or (iii) consistent with the purposes of this Act. EPCA, § 325(j) and 325(k), 42 U.S.C. § 6295(j) and § 6295(k).

B. Background

On February 20, 1997, the Department published in the **Federal Register** a Notice of Proposed Rulemaking regarding Test Procedures and Certification Requirements for Plumbing Products; and Certification Reporting Requirements for Residential Appliances. 62 FR 7834. A public hearing was held in Washington, DC, on April 1, 1997. The comment period for written submissions was closed on May 6, 1997.

The notice proposed to codify into the Code of Federal Regulations statutory requirements with respect to plumbing products (water conservation standards, test procedures, and definitions); provide regulations for certification and enforcement requirements for plumbing products; and to clarify and extend the certification and enforcement requirements to all residential covered products.

II. Discussion of Comments

A. Test Procedures

(1) Faucets and Showerheads

In the proposed rule, the Department proposed to incorporate by reference, section 6.5, "Flow Capacity Test," in ASME/ANSI Standard A112.18.1M–1994, for testing faucets and showerheads. On May 29, 1996, the test procedure requirements for faucets and showerheads in ASME/ANSI Standard A112.18.1M–1994 were revised and issued as ASME/ANSI Standard A112.18.1M–1996.

The Plumbing Manufacturers Institute (PMI), Moen Incorporated (Moen), and Kohler Company (Kohler) commented that the test requirements for measuring water consumption remained unchanged and urged that DOE incorporate instead ASME/ANSI Standard A112.18.1M–1996. (PMI, Transcript, at 20; Moen, Transcript, at 22; and Kohler, Transcript, at 23). No additional comments were received. The Department is incorporating by reference section 6.5 in ASME/ANSI Standard A112.18.1M–1996 in today's final rule.

(2) Water Closets and Urinals

In the proposed rule, DOE proposed to incorporate by reference, section 7.1.2, "Test Apparatus and General Instructions," and subsections 7.1.2.1, 7.1.2.2, 7.1.2.3, and 7.1.6, "Water Consumption and Hydraulic Characteristics," in ASME/ANSI Standard A112.19.6–1990, for testing water closets. In the same ASME/ANSI Standard, the Department also proposed to incorporate by reference, section 8.2, "Test Apparatus and General Instructions," subsections 8.2.1, 8.2.2, 8.2.3, and section 8.5, "Water Consumption," for testing urinals. On April 19, 1996, the test procedure requirements for water closets and urinals in ASME/ANSI Standard A112.19.6–1990 were revised and issued as ASME Standard A112.19.6–1995.

American Standard Inc. (American Standard) stated that test procedure requirements for water closets and urinals in both versions of ASME/ANSI Standard A112.19.6 are identical, and recommended that DOE incorporate instead ASME Standard A112.19.6–1995. (American Standard Inc., Transcript, at 95). No additional comments were received. The Department is incorporating by reference sections 7.1.2, 7.1.2.1, 7.1.2.2, 7.1.2.3, 7.1.6, 8.2, 8.2.1, 8.2.2, 8.2.3, and 8.5 in ASME Standard A112.19.6–1995 in today's final rule.

B. Water Conservation Standards

(1) Faucets

In the proposed rule, the Department proposed, in response to industry's request for conformity with a single standard, to adopt the faucet standard (2.2 gallons per minutes (gpm) at 60 pounds per square inch (psig)) contained in ASME/ANSI Standard A112.18.1M–1994. The American Water Works Association (AWWA), the California Energy Commission (CEC), PMI, and the International Association of Plumbing and Mechanical Officials (IAPMO) supported the standard for faucets in ASME/ANSI Standard A112.18.1M–1994 (2.2 gpm at 60 psig). (AWWA, No. 1, at 2; CEC, Transcript, at 18; PMI, Transcript, at 20; and IAPMO, Transcript, at 21).

As discussed above, ASME/ANSI Standard A112.18.1M–1994 was revised and issued as ASME/ANSI Standard A112.18.1M–1996; however, the standard for faucets remained the same as in ASME/ANSI Standard A112.18.1M–1994. No other comments were received. Based on the above considerations, the Department is incorporating the faucet standard in ASME/ANSI Standard A112.18.1M–1996 in today's final rule.

(2) Showerheads

In the proposed rule, the Department proposed to codify the statutory standard for showerheads (2.5 gpm at 80 psig) and incorporate by reference the tamper proofing requirement in section 7.4.4(a) of ASME/ANSI Standard A112.18.1M–1994. This requirement specifies that if a flow control insert is used as a component part of a showerhead, then it must be manufactured such that a pushing or pulling force of 36 Newtons (8 lbf) or more is required to remove the insert.

As previously mentioned, ASME/ANSI Standard A112.18.1M–1994 was revised and issued as ASME/ANSI

Standard A112.18.1M–1996. The standard for showerheads in both ASME/ANSI Standard A112.18.1M–1994 and ASME/ANSI Standard A112.18.1M–1996, is the same as the level prescribed in EPCA. DOE is codifying the statutory standard for showerheads and incorporating by reference Section 7.4.4(a) of ASME/ANSI Standard A112.18.1M–1996, in today's final rule.

(3) Water Closets and Urinals

In the proposed rule, DOE proposed to codify the statutory standards for water closets and urinals. The maximum water use allowed is 1.6 gallons per flush (gpf) for gravity tank-type toilets, flushometer tank toilets, and electromechanical hydraulic toilets, if manufactured after January 1, 1994; and for flushometer valve toilets and commercial gravity tank-type 2 piece toilets, if manufactured after January 1, 1997. The maximum water use allowed for blowout toilets is 3.5 gpf, if manufactured after January 1, 1994. The maximum water use for any urinal is 1.0 gpf, if manufactured after January 1, 1997.

As previously mentioned, ASME/ANSI Standard A112.19.6–1990 was revised and issued as ASME/ANSI A112.19.6–1995. The standards for toilets and urinals, which remained unchanged in the updated ASME/ANSI Standard, are also at the levels prescribed in EPCA. The Department is codifying the statutory standards for toilets and urinals in today's final rule.

C. Definitions

In the proposed rule, the Department proposed definitions for the terms "consumer product," "energy conservation standard," "estimated annual operating cost," "ANSI," "ASME," "blowout," "faucet," "flushometer tank," "flushometer valve," "low consumption," "showerhead," "urinal," "water closet," and "water use" drawn from EPCA § 321. No comments were requested or required for incorporation of these statutory definitions. DOE is incorporating these statutory definitions in today's final rule.

D. Definition of "Basic Model"

In the proposed rule, DOE proposed to establish definitions of "basic model" for plumbing products. These definitions allow models that exhibit essentially identical characteristics to be categorized into a family, where only representative samples within that family would need to be tested for certification purposes.

For faucets and showerheads, the Department proposed that "basic model" be defined by either the flow control mechanism attached to or installed with the fixture fittings, or the models that have identical water-passage design features that use the same path of water in the highest flow mode. For water closets and urinals, the Department proposed that "basic model" be defined as units which have hydraulic characteristics that are essentially identical, and which do not have any differing physical or functional characteristics that affect consumption. No comments on this issue were received. The Department is adopting these definitions as proposed in today's final rule.

E. Definition of "Electromechanical Hydraulic Toilet"

In the proposed rule, DOE proposed to define "electromechanical hydraulic toilet," as "any water closet that utilizes electrically operated devices, such as, but not limited to, air compressors, pumps, solenoids, motors, or macerators in place of, or to aid, gravity in evacuating waste from the toilet bowl." No comments on this proposal were received. The Department is adopting the definition as proposed in today's final rule.

F. Statistical Sampling Plans for Certification Testing

In the proposed rule, DOE proposed statistical sampling plans for faucets, showerheads, water closets, and urinals based on the current approach used for residential appliances. The purpose of sampling plans is to minimize the test burden while ensuring that the true mean performance of the product being manufactured and sold meets or conforms to the statutory water usage standard.

DOE proposed a statistical sampling plan at 95 percent confidence limits with a 1.05 divisor for faucets and showerheads, and at 90 percent confidence limits with a 1.10 divisor for water closets and urinals. AWWA supported the statistical sampling plans at the levels proposed. (AWWA, No. 1, at 2; and Transcript, at 25). No other comments were received on this issue. The Department is adopting the statistical plans as proposed in today's final rule.

G. Certification Reporting Requirements for Plumbing Products

(1) Types of Information To Be Submitted

In the proposed rule, DOE proposed that each basic model of a covered product to be certified include the following information: the product type, product class, manufacturer's name, private labeler name(s), if applicable, the manufacturer's model number(s), and the water usage. IAPMO supported DOE's proposal. (IAPMO, Transcript, No. 38). No additional comments on this proposal were received. DOE is adopting this provision in today's final rule.

(2) Precision Level of Reported Test Results

In the proposed rule, DOE noted that statutory standards for faucets, showerheads, water closets, and urinals are specified in terms of a tenth of a gallon, or in the case of metering faucets, a hundredth of a gallon, and proposed that these levels be observed in certification and enforcement. No comments on this proposal were received. The Department is adopting this provision in today's final rule.

(3) Mathematical Rounding Rules

In the proposed rule, the Department proposed that reported test results conform to precision levels established in EPCA and that they be converted from test data utilizing the following mathematical rounding rules: Five and above round up, and less than five, round down. DOE also specified that such rounding rules are to be applied after the final result is calculated.

American Standard stated that there is confusion in the industry on whether to apply rounding rules to conform with specified precision levels at each step of the calculation or only once after the final result is calculated. American Standard claimed that different test results may be generated and requested that DOE clarify the application of the proposed rounding rules. (American Standard, Transcript, at 35). The California Energy Commission (CEC) and AWWA also supported clarification. (CEC, Transcript, at 35; and AWWA, No. 1, at 2–3).

The Department believes that rounding at each step of the calculation or rounding once after the final result is calculated may generate different reported test results. Therefore, today's final rule clarifies the application of the proposed rounding rules by specifying that measurements are to be recorded at the resolution of the test instrumentation and that at each step in the measurement and calculation procedure, the results are to be rounded off to the same number of significant digits as the previous step. The final water consumption value shall be rounded to one decimal place for water closets, urinals, and shower heads and

non-metered faucets, or two decimal places for metered faucets.

(4) Effective Date for Initial Certification Submissions

In the proposed rule, DOE proposed plumbing manufacturers be provided one year to comply with the certification requirements of sections 430.62(a)(4) (vii), (xiv–xvi) of this rule. No comments on this proposal were received. The Department is adopting this provision in today's final rule.

H. Modifications to Existing Language To Include Plumbing Products in the Code of Federal Regulations

In the proposed rule, DOE proposed to amend sections 430.27, 430.31–430.33, 430.40, 430.41, 430.47, 430.49, 430.50, 430.60, 430.61, 430.63, 430.70(a)(1), 430.70(a)(3), 430.70(a)(6) and 430.73 of Title 10 of the CFR by modifying existing language to include plumbing products covered by EPCA.

AWWA's proposed amendment to section 430.33 would allow States to set more restrictive water conservation standards and preempt States from setting less restrictive standards than the Federal standard. Section 327(c) of EPCA, however, specifies that when a Federal standard is in effect with respect to water use for faucets, showerheads, water closets and urinals, any State regulation concerning the water use of these covered products is preempted, regardless of whether it is more or less restrictive than the Federal standard, subject to six limited exceptions. (Two of the exceptions related specifically to water use standards of New York, Rhode Island, and Georgia in effect on the date of enactment of the Energy Policy Act of 1992.) Under current law, DOE is without authority to make the change requested by AWWA. While Congress preempted State standards, at the same time it showed a desire to allow State standards upon certain findings [327(d)]. Congress recognized that circumstances can exist where States will be permitted to establish or maintain standards, and EPCA established procedures for the Secretary to review the propriety of the State's exercise of regulatory authority.

The Association of Home Appliance Manufacturers (AHAM) commented that provisions in sections 430.27, 430.41, and 430.70, which DOE proposed to amend to include plumbing products by adding the term "water," could mistakenly subject certain AHAM products (i.e., clothes washers and dishwashers) to water consumption requirements that only need to meet minimum energy conservation standards. To alleviate potential confusion, AHAM requested that DOE either cross reference the term "water" to plumbing products or create separate paragraphs for products required to meet minimum energy or maximum permissible water conservation standards. (AHAM, No. 4, at 1–2). The Department agrees that it is appropriate to clarify to which products water consumption requirements are applicable. DOE is revising sections 430.27, 430.41, 430.70, and other sections as necessary by cross referencing the term "water" to apply only to faucets, showerheads, water closets, and urinals in today's final rule.

I. Faucet Standards for Multiple-User Sprayheads

(1) Application of Faucet Standards to Sprayheads With Independently-Controlled Orifices

In the proposed rule, the Department proposed that each orifice of a sprayhead with independently-controlled orifices, depending on its mode of actuation, shall not exceed the maximum flow rate for a lavatory or metering faucet. No comments on this proposal were received. The Department is adopting this provision in today's final rule.

(2) Application of Faucet Standards to Sprayheads With Collectively-Controlled Orifices

In the proposed rule, the Department proposed that the maximum flow rate of a manually-activated sprayhead with collectively-controlled orifices shall be the product of the maximum flow rate for a lavatory faucet and the number of component lavatories (rim space of the lavatory in inches (millimeters) divided by 20 inches (508 millimeters)). DOE also proposed that the maximum flow rate of a metered-activated sprayhead shall be the product of the maximum flow rate for a metering faucet and the number of component lavatories (rim space of the lavatory in inches (millimeters) divided by 20 inches (508 millimeters)).

CEC and the Building Officials and Code Administrators International (BOCA) supported DOE's proposal. (CEC, Transcript, at 83; and BOCA, Transcript, at 88). IAPMO objected and instead recommended that prorating be based on 24 inches and 18 inches, for sprayheads that are installed in a lineal and circular lavatory, respectively. (IAPMO, Transcript, at 89). Bradley Corporation (Bradley) claimed that lavatories to which sprayheads are mounted are generally circular or semicircular rather than lineal. Moreover, Bradley added that 18 and 20 inches are the two capacity criteria generally used for lavatories, that 20 inches is totally appropriate and is also more conservative than 18 inches. (Bradley, Transcript, at 89). The Department agrees with Bradley's comment regarding the appropriateness of prorating using 20 inches and is adopting the provision as proposed in today's final rule.

J. Urinal Standard for Trough-Type Urinals

On February 7, 1997, Kohler submitted a letter to DOE regarding trough-type urinals. Kohler stated that trough-type urinals, which are produced in sizes of 36 inches, 48 inches, 60 inches, and 72 inches, are fixtures designed for multiple-users and are generally installed in places of high density. Kohler believed these products are covered under EPCA and requested that it be allowed to satisfy compliance with the standard by prorating maximum water use based upon 16 inches per individual. In a March 24, 1997 letter to Kohler, the Department agreed that Kohler's proposal seemed reasonable but that it intends to seek additional input. This proposal was discussed at the April 2, 1997, public hearing for plumbing products.

Both IAPMO and CEC supported Kohler's proposal. (IAPMO, Transcript, at 66; and CEC, Transcript, at 83). Kohler claimed that Eljer Industries, Inc. also supported its proposal. (Kohler, Transcript, at 72). No additional comments on this proposal were received. The Department is adopting the provision in today's final rule to read as follows:

"430.32(r) *Urinals.* The maximum water use allowed for any urinals manufactured after January 1, 1994, shall be 1.0 gallons per flush (3.8 liters per flush).[1]

[1] The maximum water use allowed for a trough-type urinal shall be the product of (a) the maximum flow rate for a urinal and (b) the length of the trough-type urinal in inches (meters) divided by 16 inches (0.406 meters)."

K. Enforcement

In the proposed rule, the Department proposed to extend its enforcement policies to include plumbing products. DOE believes that its existing enforcement procedures are adequate for deterring would-be violators.

The New York State Department of Environmental Conservation (NYSDEC) claimed that it is necessary for DOE to establish a product or manufacturer listing program to protect consumers

from non-complying manufacturers. (NYSDEC, No. 5, at 2).

Presently, the Department is not aware of any manufacturers who are producing non-compliant products for distribution. Furthermore, DOE believes that the enforcement mechanisms it proposed to extend to plumbing products in the proposed rule are adequate. Therefore, in today's final rule, the Department is establishing enforcement provisions for plumbing products as proposed.

L. Clarification of Certification Reporting Requirements for Residential Appliances

In the proposed rule, DOE proposed to redesignate, revise existing language, and add new language and paragraphs in section 430.62, and Appendices A and B to Subpart F of the CFR as necessary regarding certification and enforcement requirements for all residential appliances, including plumbing products. The proposed modifications for which DOE received no comments are incorporated in today's final rule. The proposed modifications for which comments were received are discussed below:

(1) Means of Certification

Section 430.62 of the CFR presently allows a manufacturer or private labeler to directly certify covered products to DOE or authorize a third party to certify on its behalf. In the proposed rule, DOE proposed to extend this coverage to plumbing products. Both IAPMO and AWWA questioned the integrity of self-certification by manufacturers and suggested that DOE revise its rule to allow only third-party certification. (IAPMO, Transcript, at 40; and AWWA, Transcript, at 57). PMI, CEC, Kohler, American Standard, Bradley, Delta Faucets (Delta) and the National Voluntary Laboratory Accreditation Program (NVLAP) argued that enforcement provisions presently exist to deter would-be violators, and that eliminating the option of self-certification would impose a logistic or financial burden on manufacturers. (PMI, Transcript, at 51; CEC, Transcript, at 55; Kohler, Transcript, at 56; American Standard, Transcript, at 60; Bradley, Transcript, at 62; Delta, Transcript, at 62; and NVLAP, Transcript, at 63).

The Department agrees with the comments by PMI, CEC, Kohler, American Standard, Bradley, Delta Faucets (Delta) and NVLAP that current enforcement provisions are adequate. DOE also believes it necessary to maintain flexibility in the certification of products to DOE by manufacturers and private labelers. Based on the above considerations, the Department does not believe the revision suggested by IAPMO and AWWA is justified for inclusion in today's final rule.

(2) Discontinued Model

Section 430.62(c) of the CFR presently requires that "discontinued models" be reported in writing to DOE. In the proposed rule, DOE proposed to clarify the section by defining "discontinued model" as "a basic model which has ceased production," specifying the type of information to be submitted, and requiring that such models be reported within six months of being discontinued.

AHAM claimed the proposed definition of "discontinued model" could cause confusion if applied to rebate models for which production has ceased but which may be sold for several years. (AHAM, No. 4, at 1–2). The Whirlpool Corporation (Whirlpool) added that the proposed six-month reporting period requirement would impose a logistic and financial burden on the manufacturers and requested that it be withdrawn. (Whirlpool, No. 6, at 4).

The Department agrees with AHAM that DOE's proposed definition of "discontinued model" needs to be clarified. DOE also agrees with Whirlpool that the proposed six-month reporting period requirement following discontinuance of models may impose an unnecessary burden on the industry. Based on the above considerations, DOE is revising the section in question to read as follows:

430.62(c) Discontinued model. A basic model is discontinued when its production has ceased and is no longer being distributed. Such models shall be reported, by certified mail, to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Codes and Standards, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–012. For each basic model, this report shall include: product type, product class, the manufacturer's name, the private labeler name(s), if applicable, and the manufacturer's model number. If the reporting of discontinued models coincides with the submittal of a certification report, such models can be included in the certification report.

(3) Amendment of Information

In the proposed rule, DOE proposed to add a new section: 430.62(f), "Amendment of Information," which would require a manufacturer or his representative to submit, by certified mail, a statement of compliance or certification report with the revised information if any information previously submitted has changed.

Both the Air-Conditioning & Refrigeration Institute (ARI) and AHAM asserted that such information would be submitted anyway in the course of new submissions and requested that the proposal be withdrawn. (ARI, No. 3, at 1; and AHAM, No. 4, at 2). DOE agrees with the suggestion by ARI and AHAM and is withdrawing this proposal in today's final rule.

(4) Submission of Annual Energy Use for Kitchen Ranges, Ovens, and Microwave Ovens

In the proposed rule, DOE proposed to require submissions of annual energy use on a per model basis for kitchen ranges, ovens, and microwave ovens.

Both AHAM and Whirlpool noted that there are presently no minimum energy efficiency reporting requirements for kitchen ranges, ovens, and microwave ovens, that it would create an unnecessary test burden on manufacturers, and recommended that the proposal be withdrawn. Section 323(a)(1)(B) that the Secretary may prescribe test procedures for a consumer product classified as covered product. Even without minimum efficiency standards for a covered product this information could be used to assist consumers in purchasing more efficient products. However, DOE does recognize that testing and reporting of efficiency data does place an added burden on manufacturers and therefore is withdrawing this requirement for kitchen ranges, ovens, and microwave ovens at this time.

M. Metric Equivalents

In the proposed rule, DOE proposed that along with English measurements (*i.e.*, gallons per minutes (gpm), gallons per cycle (gal/cycle), or gallons per flush (gpf)), metric equivalents (*i.e.* liters per minute (L/min), liters per cycle (L/cycle), or liters per flush (Lpf)) shall be required in certification reports submitted to the Department.

American Standard stated such requirement would impose a paperwork burden and requested that DOE select only one measurement system (*i.e.*, English or metric). (American Standard, Transcript, at 116). However, the Department does not believe the provision would unduly burden the industry. Only one certification report containing both English and metric units will be required rather than dual certification reports. Based on the above considerations, the Department rejects American Standard's request to select one measurement system for

certification submission and instead will finalize in today's rule the provision as proposed.

Mr. Lawrence J. Stempnik recommended that metric units be listed first, followed by the English conversion as supplementary units on certification reports to DOE. Also, he recommended that a statement be added to allow reports to be submitted in metric units only. In addition, Mr. Stempnik argued that the acronym "Lpf" (liter per flush) is not a metric unit, that it would confuse consumers, and recommended that "L" (liter) be used instead. (Lawrence J. Stempnik, No. 2, at 3–5). DOE believes that since the unit of liters per flush (Lpf) is well-accepted in the plumbing standards and literature, and adequately defines the water consumption on the basis of usage, it should not prove confusing for consumers. Therefore, the Department rejects Mr. Stempnik's request to replace the acronym "Lpf" with "L" in today's final rule. The Department also believes that because the standards are written in English units, the English units should be listed first in certification reports, followed by the metric equivalents in parentheses.

N. Other Issues

The following is a discussion of issues raised by other commenters:

(1) Establishment of an E-mail Address

Mr. Lawrence J. Stempnik requested that submissions of information via e-mail from companies to the Department be allowed. (Lawrence J. Stempnik, No. 2, at 5). Mr. Stempnik claimed that this would facilitate electronic storage of the data and enable multi-user access to electronic databases instead of paper files.

The Department currently has no mechanism for maintaining electronic databases of covered products, and therefore requires paper copies of compliance statements and certification reports. It should be noted that electronic copies would only be considered for certification reports, and not for compliance statements, which require an original signature. Although the Department declines to add e-mail as an official option for submitting certification reports in today's final rule, it will begin to evaluate the possibility of using electronic submittals for certification reports in the future. The Department would therefore appreciate manufacturers or their authorized representatives, at their option, submitting electronic files of their certification reports in addition to the required paper copies for DOE's consideration. The submission of electronic files is strictly voluntary.

(2) Performance-Based Standard

Mr. Lawrence Stempnik suggested that in addition to water consumption, a performance-based requirement, based on the unit's capability to expel a certain mass in one flush, be included in the testing of water closets. (Lawrence J. Stempnik, No. 2, at 3).

The current ASME/ANSI standard for water closets (ASME/ANSI A112.19.6–1995) includes some performance tests, but they are considered by the ASME committee responsible for the standard to be inadequate for accurately assessing the ability of a water closet to remove solid waste from the bowl and transport it to the drain line. The ASME committee responsible for the standard has established a task force to develop and refine an effective bulk media removal test for inclusion in the next revision of the standard. The Department agrees with Mr. Stempnik's emphasis on the importance of producing toilets that perform successfully, and supports the continuing efforts by industry to develop more effective tests to measure the performance of water closets.

(3) Consumer Tampering

The AWWA commented that toilets should be designed such that water consumption cannot be increased through tampering. (AWWA, No. 1, at 3). The manufacturers of plumbing products currently have a task group investigating adjustability issues. However, EPCA only authorizes DOE to regulate requirements to restrict consumer tampering to alter the water consumption of covered plumbing products for showerheads. 42 U.S.C. § 6295(j)(1) Therefore, the Department declines AWWA's suggestion to require tamper-proofing of toilets in today's final rule. The Department encourages manufacturers to consider development of designs which discourage tampering.

(4) Product Listing

The New York State Department of Environmental Conservation commented that a directory or listing of plumbing products conforming to the Energy Policy and Conservation Act should be produced. (NYSDEC, No. 5, at 1). It believes that such a directory is necessary to aid State and local officials in determining which products are in conformance, and to help rid the marketplace of non-conforming products. AWWA questioned how consumers would be made aware of conforming plumbing products (AWWA, Transcript, at 109).

Currently, listings of complying energy-efficient products (i.e., refrigerators, clothes washers, dishwashers, water heaters, etc) are compiled by industry and consumer groups such as the ARI, the American Council for an Energy Efficient Economy, and Gas Appliance Manufacturers Association. DOE believes that similar organizations in the plumbing industry could equally provide such listings for complying plumbing products. Therefore, the Department declines to develop a product directory in today's final rule.

III. Procedural Requirements

A. Review Under the National Environmental Policy Act of 1969

In this rule, the Department codifies statutorily mandated water conservation standards and test procedures for faucets, showerheads, water closets, and urinals. Implementation of this rule will not result in environmental impacts apart from the effects of the water conservation standards established by Congress in EPCA and incorporated in today's rule. The test procedures for measuring water consumption in this rule are mandated by EPCA and are already in general use in the industry. The Department has therefore determined that this rule is covered under the Categorical Exclusion found at paragraph A.6 of appendix A to subpart D, 10 CFR Part 1021, which applies to "rulemakings that are strictly procedural," and which, therefore, have no environmental effect. By this final rule, the Department is following the direction of the Energy Policy Act and incorporating by reference test procedures that are already being used by industry, while adding sampling plans, certification reporting and labeling requirements, definitions, and clarifications of ambiguous issues and of the existing certification reporting requirements for residential appliances. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

B. Review Under Executive Order 12866, "Regulatory Planning and Review"

This regulatory action is not a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review," October 4, 1993. Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. §§ 601–612, requires the preparation of an initial regulatory flexibility analysis for every rule which by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. In the NOPR, DOE invited public comment on its conclusion that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. The NOPR presented detailed information on the number of small manufacturers of plumbing fixtures and fittings that would be affected by the rule, and it discussed the statutory basis for standards and test procedures incorporated in the rule and steps DOE has taken to minimize the economic impact on covered firms. As explained in the NOPR, this rule includes water conservation standards that are prescribed by EPCA and updated test procedures that EPCA requires DOE to adopt. The test procedures which are incorporated in this rule (ASME/ANSI Standards A112.18.1M–1996 and A112.19.6–1995) are already in general use in the industry. The rule also revises certification and enforcement requirements in 10 CFR Part 430 that apply to all manufacturers of covered products (*see* discussion under "Review Under the Paperwork Reduction Act" in this **SUPPLEMENTARY INFORMATION** section). DOE received no public comments that specifically addressed the impact of the rule on small businesses.

DOE certifies that complying with this final rule (excluding the cost of compliance with the water conservation standards and test procedures directly imposed by EPCA) would not impose significant economic costs on a substantial number of small manufacturers.

D. Review Under Executive Order 12612, "Federalism"

Executive Order 12612, "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effect on States, on the relationship between the National Government and States, or in the distribution of power and responsibilities among various levels of government. If there are substantial effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

The rule published today will not regulate the States. They will primarily affect the manner in which DOE promulgates residential appliance, commercial product, and water conservation standards; test procedures; and certification requirements, prescribed under the Energy Conservation and Policy Act. State regulation in this area is largely preempted by the Energy Policy and Conservation Act. The rule published today will not alter the distribution of authority and responsibility to regulate in this area. Accordingly, DOE has determined that preparation of a federalism assessment is unnecessary.

E. Review Under Executive Order 12630, "Governmental Actions and Interference With Constitutionally Protected Property Rights"

It has been determined pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 52 FR 8859 (March 18, 1988), that this regulation will not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

F. Review Under the Paperwork Reduction Act

Today's final rule will revise certification and enforcement requirements applicable to manufacturers of covered consumer products. Appendix A to Subpart F of part 430, "Compliance Statement and Certification Report," was previously approved by OMB and assigned OMB Control No. 1910–1400. The final rule will revise this form to cover certification of plumbing products; facilitate use of the form by third party representatives of covered product manufacturers; and, in an attachment, specify the format of the certification report that manufacturers currently are required to submit to DOE by 10 CFR part 430.62(a)(2). OMB has approved the revised "Compliance Statement and Certification Report" and extended its effectiveness until June 30, 2000. An agency may not conduct or sponsor a collection of information unless the collection displays a currently valid OMB control number. (*See* 5 CFR § 1320.5(b)).

The final rule will require manufacturers of plumbing products to maintain records concerning their determinations of the water consumption of faucets, showerheads, water closets and urinals. DOE has concluded that this record keeping requirement is necessary for implementing and monitoring compliance with the water conservation standards, testing and certification requirements for residential and commercial faucets, showerheads, water closets and urinals mandated by EPCA. The final rule also requires manufacturers to submit initial certification reports for basic models of covered faucets, showerheads, water closets and urinals within 12 months after the publication of a final rule in the **Federal Register**. The initial certification reports will be a one-time submission stating that the manufacturer has determined by employing actual testing that the basic model of faucet, showerhead, water closet or urinal meets the applicable water conservation standard. After the first year, manufacturers of plumbing products will have to submit a certification report for each new basic model, or to certify compliance with a new or amended standard, before the model will be allowed to be distributed in commerce.

G. Review Under Executive Order 12988, "Civil Justice Reform"

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by Section 3(a), Section 3(b) of the Executive Order specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provide a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of the Executive Order requires Executive agencies to review regulations in light of applicable standards Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of

them. DOE reviewed today's final rule under the standards of Section 3 of the Executive Order and determined that, to the extent permitted by law, they meet the requirements of those standards.

H. Review Under Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") requires that the Department prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The budgetary impact statement must include: (i) identification of the federal law under which the rule is promulgated; (ii) a qualitative and quantitative assessment of anticipated costs and benefits of the federal mandate and an analysis of the extent to which such costs to state, local, and tribal governments may be paid with federal financial assistance; (iii) if feasible, estimates of the future compliance costs and of any disproportionate budgetary effects the mandate has on particular regions, communities, non-federal units of government, or sectors of the economy; (iv) if feasible, estimates of the effect on the national economy; and (v) a description of the Department's prior consultation with elected representatives of state, local, and tribal governments and a summary and evaluation of the comments and concerns presented.

The Department has determined that the action proposed today does not include a federal mandate that may result in estimated costs of $100 million or more to state, local or to tribal governments in the aggregate or to the private sector. Therefore, the requirements of Sections 203 and 204 of the Unfunded Mandates Act do not apply to this action.

I. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996

Prior to the effective date of this regulatory action, set forth above, DOE will submit a report to Congress containing the rule and other information, as required by 5 U.S.C. 801(a)(1)(A). The report will state that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances, Incorporation by reference.

Issued in Washington, DC, on March 13, 1998.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Part 430 of Chapter II of Title 10, Code of Federal Regulations, is amended as follows.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309.

2. Section 430.2 of Subpart A is amended by revising the definitions for "consumer product," and "energy conservation standard," adding new paragraphs (17) through (20) in the definition of "basic model," and adding new definitions for "ANSI," "ASME," "blowout," "electromechanical hydraulic toilet," "estimated annual operating cost," "faucet," "flushometer tank," "flushometer valve," "low consumption," "showerhead," "urinal," "water closet," and "water use" in alphabetical order, to read as follows:

Subpart A—General Provisions

§ 430.2 Definitions.

* * * * *

ANSI means the American National Standards Institute.

ASME means the American Society of Mechanical Engineers.

* * * * *

Basic model * * *

(17) With respect to faucets, which have the identical flow control mechanism attached to or installed within the fixture fittings, or the identical water-passage design features that use the same path of water in the highest-flow mode.

(18) With respect to showerheads, which have the identical flow control mechanism attached to or installed within the fixture fittings, or the identical water-passage design features that use the same path of water in the highest-flow mode.

(19) With respect to water closets, which have hydraulic characteristics that are essentially identical, and which do not have any differing physical or functional characteristics that affect water consumption.

(20) With respect to urinals, which have hydraulic characteristics that are essentially identical, and which do not have any differing physical or functional characteristics that affect water consumption.

* * * * *

Blowout has the meaning given such a term in ASME A112.19.2M–1995. (see § 430.22)

* * * * *

Consumer product means any article (other than an automobile, as defined in Section 501(1) of the Motor Vehicle Information and Cost Savings Act):

(1) Of a type—

(i) Which in operation consumes, or is designed to consume, energy or, with respect to showerheads, faucets, water closets, and urinals, water; and

(ii) Which, to any significant extent, is distributed in commerce for personal use or consumption by individuals;

(2) Without regard to whether such article of such type is in fact distributed in commerce for personal use or consumption by an individual, except that such term includes fluorescent lamp ballasts, general service fluorescent lamps, incandescent reflector lamps, showerheads, faucets, water closets, and urinals distributed in commerce for personal or commercial use or consumption.

* * * * *

Electromechanical hydraulic toilet means any water closet that utilizes electrically operated devices, such as, but not limited to, air compressors, pumps, solenoids, motors, or macerators in place of or to aid gravity in evacuating waste from the toilet bowl.

Energy conservation standard means:

(1) A performance standard which prescribes a minimum level of energy efficiency or a maximum quantity of energy use, or, in the case of showerheads, faucets, water closets, and urinals, water use, for a covered product, determined in accordance with test procedures prescribed under Section 323 of EPCA (42 U.S.C. 6293); or

(2) A design requirement for the products specified in paragraphs (6), (7), (8), (10), (15), (16), (17), and (19) of Section 322(a) of EPCA (42 U.S.C. 6292(a)); and

(3) Includes any other requirements which the Secretary may prescribe under Section 325(r) of EPCA (42 U.S.C. 6295(r)).

Estimated annual operating cost means the aggregate retail cost of the energy which is likely to be consumed annually, and in the case of showerheads, faucets, water closets, and urinals, the aggregate retail cost of water and wastewater treatment services likely to be incurred annually, in representative use of a consumer

product, determined in accordance with Section 323 of EPCA (42 U.S.C. 6293).

* * * * *

Faucet means a lavatory faucet, kitchen faucet, metering faucet, or replacement aerator for a lavatory or kitchen faucet.

* * * * *

Flushometer tank means a device whose function is defined in flushometer valve, but integrated within an accumulator vessel affixed and adjacent to the fixture inlet so as to cause an effective enlargement of the supply line immediately before the unit.

Flushometer valve means a valve attached to a pressurized water supply pipe and so designed that when actuated, it opens the line for direct flow into the fixture at a rate and quantity to properly operate the fixture, and then gradually closes to provide trap reseal in the fixture in order to avoid water hammer. The pipe to which this device is connected is in itself of sufficient size, that when open, will allow the device to deliver water at a sufficient rate of flow for flushing purposes.

* * * * *

Low consumption has the meaning given such a term in ASME A112.19.2M–1995. (see § 430.22)

* * * * *

Showerhead means any showerhead (including a hand held showerhead), except a safety shower showerhead.

* * * * *

Urinal means a plumbing fixture which receives only liquid body waste and, on demand, conveys the waste through a trap seal into a gravity drainage system, except such term does not include fixtures designed for installations in prisons.

* * * * *

Water closet means a plumbing fixture that has a water-containing receptor which receives liquid and solid body waste, and upon actuation, conveys the waste through an exposed integral trap seal into a gravity drainage system, except such term does not include fixtures designed for installation in prisons.

* * * * *

Water use means the quantity of water flowing through a showerhead, faucet, water closet, or urinal at point of use, determined in accordance with test procedures under Appendices S and T of subpart B of this part.

* * * * *

3. Section 430.22 of subpart B is amended by adding paragraph (b)(6) to read as follows:

Subpart B—Test Procedures

§ 430.22 Reference Sources.

* * * * *

(b) * * *

(6) American Society of Mechanical Engineers (ASME). The ASME standards listed in this paragraph may be obtained from the American Society of Mechanical Engineers, Service Center, 22 Law Drive, P.O. Box 2900, Fairfield, NJ 07007.

1. ASME/ANSI Standard A112.18.1M–1996, "Plumbing Fixture Fittings."

2. ASME/ANSI Standard A112.19.6–1995, "Hydraulic Requirements for Water Closets and Urinals."

* * * * *

4. Section 430.23 of subpart B is amended by revising the section heading and adding new paragraphs (s), (t), (u), and (v), to read as follows:

§ 430.23 Test procedures for measures of energy and water consumption.

* * * * *

(s) *Faucets.* The maximum permissible water use allowed for lavatory faucets, lavatory replacement aerators, kitchen faucets, and kitchen replacement aerators, expressed in gallons and liters per minute (gpm and L/min), shall be measured in accordance to section 2(a) of Appendix S of this subpart. The maximum permissible water use allowed for metering faucets, expressed in gallons and liters per cycle (gal/cycle and L/cycle), shall be measured in accordance to section 2(a) of Appendix S of this subpart.

(t) *Showerheads.* The maximum permissible water use allowed for showerheads, expressed in gallons and liters per minute (gpm and L/min), shall be measured in accordance to section 2(b) of Appendix S of this subpart.

(u) *Water closets.* The maximum permissible water use allowed for water closets, expressed in gallons and liters per flush (gpf and Lpf), shall be measured in accordance to section 3(a) of Appendix T of this subpart.

(v) *Urinals.* The maximum permissible water use allowed for urinals, expressed in gallons and liters per flush (gpf and Lpf), shall be measured in accordance to section 3(b) of Appendix T of this subpart.

5. Section 430.24 of subpart B is amended by adding new paragraphs (s), (t), (u), and (v), to read as follows:

§ 430.24 Units to be tested.

* * * * *

(s) For each basic model of faucet,[1] a sample of sufficient size shall be tested to ensure that any represented value of water consumption of a basic model for which consumers favor lower values shall be no less than the higher of:

(1) The mean of the sample or

(2) The upper 95 percent confidence limit of the true mean divided by 1.05.

(t) For each basic model[1] of showerhead, a sample of sufficient size shall be tested to ensure that any represented value of water consumption of a basic model for which consumers favor lower values shall be no less than the higher of:

(1) The mean of the sample or

(2) The upper 95 percent confidence limit of the true mean divided by 1.05.

(u) For each basic model[1] of water closet, a sample of sufficient size shall be tested to ensure that any represented value of water consumption of a basic model for which consumers favor lower values shall be no less than the higher of:

(1) The mean of the sample or

(2) The upper 90 percent confidence limit of the true mean divided by 1.1.

(v) For each basic model[1] of urinal, a sample of sufficient size shall be tested to ensure that any represented value of water consumption of a basic model for which consumers favor lower values shall be no less than the higher of:

(1) The mean of the sample or

(2) The upper 90 percent confidence limit of the true mean divided by 1.1.

§ 430.27 [Amended]

6. Section 430.27 of subpart B is amended by:

a. Adding the phrase ", or water consumption characteristics (in the case of faucets, showerheads, water closets, and urinals) after the phrase "energy consumption characteristics" in paragraphs: (a)(1), (b)(1)(iii), and (l) (first sentence); and

b. Revising the existing referenced section "§ 430.22" in paragraph (a)(1) to read as "§ 430.23".

7. Subpart B of Part 430 is amended by adding Appendix S and Appendix T, to read as follows:

Appendix S to Subpart B of Part 430—Uniform Test Method for Measuring the Water Consumption of Faucets and Showerheads

1. *Scope:* This Appendix covers the test requirements used to measure the hydraulic performance of faucets and showerheads.

2. *Flow Capacity Requirements:*

a. Faucets—The test procedures to measure the water flow rate for faucets, expressed in gallons per minute (gpm) and liters per minute (L/min), or gallons per cycle (gal/

[1] Components of similar design may be substituted without requiring additional testing if the represented measures of energy or water consumption continue to satisfy the applicable sampling provision.

cycle) and liters per cycle (L/cycle), shall be conducted in accordance with the test requirements specified in section 6.5, Flow Capacity Test, of the ASME/ANSI Standard A112.18.1M–1996 (see § 430.22). Measurements shall be recorded at the resolution of the test instrumentation. Calculations shall be rounded off to the same number of significant digits as the previous step. The final water consumption value shall be rounded to one decimal place for non-metered faucets, or two decimal places for metered faucets.

b. Showerheads—The test conditions to measure the water flow rate for showerheads, expressed in gallons per minute (gpm) and liters per minute (L/min), shall be conducted in accordance with the test requirements specified in section 6.5, Flow Capacity Test, of the ASME/ANSI Standard A112.18.1M–1996 (see § 430.22). Measurements shall be recorded at the resolution of the test instrumentation. Calculations shall be rounded off to the same number of significant digits as the previous step. The final water consumption value shall be rounded to one decimal place.

Appendix T to Subpart B of Part 430—Uniform Test Method for Measuring the Water Consumption of Water Closets and Urinals

1. *Scope:* This Appendix covers the test requirements used to measure the hydraulic performances of water closets and urinals.

2. *Test Apparatus and General Instructions:*

a. The test apparatus and instructions for testing water closets shall conform to the requirements specified in section 7.1.2, Test Apparatus and General Requirements, subsections 7.1.2.1, 7.1.2.2, and 7.1.2.3 of the ASME/ANSI Standard A112.19.6–1995 (see § 430.22). Measurements shall be recorded at the resolution of the test instrumentation. Calculations shall be rounded off to the same number of significant digits as the previous step. The final water consumption value shall be rounded to one decimal place.

b. The test apparatus and instructions for testing urinals shall conform to the requirements specified in section 8.2, Test Apparatus and General Requirements, subsections 8.2.1, 8.2.2, and 8.2.3 of the ASME/ANSI Standard A112.19.6–1995 (see § 430.22). Measurements shall be recorded at the resolution of the test instrumentation. Calculations shall be rounded off to the same number of significant digits as the previous step. The final water consumption value shall be rounded to one decimal place.

3. *Test Measurement:*

a. Water closets—The measurement of the water flush volume for water closets, expressed in gallons per flush (gpf) and liters per flush (Lpf), shall be conducted in accordance with the test requirements specified in section 7.1.6, Water Consumption and Hydraulic Characteristics, of the ASME/ANSI Standard A112.19.6–1995 (see § 430.22).

b. Urinals—The measurement of water flush volume for urinals, expressed in gallons per flush (gpf) and liters per flush (Lpf), shall be conducted in accordance with the test requirements specified in section 8.5, Water Consumption, of the ASME/ANSI Standard A112.19.6–1995 (see § 430.22).

8. The subpart heading for Subpart C is revised to read as follows:

Subpart C—Energy and Water Conservation Standards

9. Section 430.31 is revised to read as follows:

§ 430.31 Purpose and scope.

This subpart contains energy conservation standards and water conservation standards (in the case of faucets, showerheads, water closets, and urinals) for classes of covered products that are required to be administered by the Department of Energy pursuant to the Energy Conservation Program for Consumer Products Other Than Automobiles under the Energy Policy and Conservation Act, as amended (42 U.S.C. 6291 *et seq.*). Basic models of covered products manufactured before the date on which an amended energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals) becomes effective (or revisions of such models that are manufactured after such date and have the same energy efficiency, energy use characteristics, or water use characteristics (in the case of faucets, showerheads, water closets, and urinals), that comply with the energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals) applicable to such covered products on the day before such date shall be deemed to comply with the amended energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals).

10. Section 430.32 of subpart C is amended by revising the section heading, revising the introductory paragraph, and adding paragraphs (o), (p), (q), and (r), to read as follows:

§ 430.32 Energy and water conservation standards and effective dates.

The energy and water (in the case of faucets, showerheads, water closets, and urinals) conservation standards for the covered product classes are:

* * * * *

(o) *Faucets.* The maximum water use allowed for any of the following faucets manufactured after January 1, 1994, when measured at a flowing water pressure of 60 pounds per square inch (414 kilopascals), shall be as follows:

Faucet type	Maximum flow rate (gpm (L/min)) or (gal/cycle (L/cycle))
Lavatory faucets	2.2 gpm (8.3 L/min)[1,2]
Lavatory replacement aerators.	2.2 gpm (8.3 L/min)
Kitchen faucets	2.2 gpm (8.3 L/min)
Kitchen replacement aerators.	2.2 gpm (8.3 L/min)
Metering faucets	0.25 gal/cycle (0.95 L/cycle)[3,4]

Note:

[1] Sprayheads with independently-controlled orifices and manual controls.

The maximum flow rate of each orifice that manually turns on or off shall not exceed the maximum flow rate for a lavatory faucet.

[2] Sprayheads with collectively controlled orifices and manual controls.

The maximum flow rate of a sprayhead that manually turns on or off shall be the product of (a) the maximum flow rate for a lavatory faucet and (b) the number of component lavatories (rim space of the lavatory in inches (millimeters) divided by 20 inches (508 millimeters)).

[3] Sprayheads with independently controlled orifices and metered controls.

The maximum flow rate of each orifice that delivers a pre-set volume of water before gradually shutting itself off shall not exceed the maximum flow rate for a metering faucet.

[4] Sprayheads with collectively-controlled orifices and metered controls.

The maximum flow rate of a sprayhead that delivers a pre-set volume of water before gradually shutting itself off shall be the product of (a) the maximum flow rate for a metering faucet and (b) the number of component lavatories (rim space of the lavatory in inches (millimeters) divided by 20 inches (508 millimeters)).

(p) *Showerheads.* The maximum water use allowed for any showerheads manufactured after January 1, 1994, shall be 2.5 gallons per minute (9.5 liters per minute) when measured at a flowing pressure of 80 pounds per square inch gage (552 kilopascals). Any such showerhead shall also meet the requirements of ASME/ANSI Standard A112.18.1M–1996, 7.4.4(a).

(q) *Water closets.* (1) The maximum water use allowed in gallons per flush for any of the following water closets manufactured after January 1, 1994, shall be as follows:

Water closet type	Maximum flush rate (gpf (Lpf))
Gravity tank-type toilets	1.6 (6.0)
Flushometer tank toilets	1.6 (6.0)
Electromechanical hydraulic toilets	1.6 (6.0).
Blowout toilets	3.5 (13.2)

(2) The maximum water use allowed for flushometer valve toilets, other than blowout toilets, manufactured after January 1, 1997, shall be 1.6 gallons per flush (6.0 liters per flush).

(r) *Urinals.* The maximum water use allowed for any urinals manufactured

after January 1, 1994, shall be 1.0 gallons per flush (3.8 liters per flush). The maximum water use allowed for a trough-type urinal shall be the product of:

(1) The maximum flow rate for a urinal and

(2) The length of the trough-type urinal in inches (millimeter) divided by 16 inches (406 millimeters).

11. Section 430.33 of subpart C is revised to read as follow:

§ 430.33 Preemption of State regulations.

Any State regulation providing for any energy conservation standard, or water conservation standard (in the case of faucets, showerheads, water closets, and urinals), or other requirement with respect to the energy efficiency, energy use, or water use (in the case of faucets, showerheads, water closets, or urinals) of a covered product that is not identical to a Federal standard in effect under this subpart is preempted by that standard, except as provided for in sections 327 (b) and (c) of the Act.

Subpart D—Petitions to Exempt State Regulation From Preemption; Petitions To Withdraw Exemption of State Regulation

12. Section 430.40 of subpart D is revised to read as follow:

§ 430.40 Purpose and scope.

(a) This subpart prescribes the procedures to be followed in connection with petitions requesting a rule that a State regulation prescribing an energy conservation standard, water conservation standard (in the case of faucets, showerheads, water closets, and urinals), or other requirement respecting energy efficiency, energy use, or water use (in the case of faucets, showerheads, water closets, and urinals) of a type (or class) of covered product not be preempted.

(b) This subpart also prescribes the procedures to be followed in connection with petitions to withdraw a rule exempting a State regulation prescribing an energy conservation standard, water conservation standard (in the case of faucets, showerheads, water closets, and urinals), or other requirement respecting energy efficiency, energy use, or water use (in the case of faucets, showerheads, water closets, and urinals) of a type (or class) of covered product.

13. Section 430.41 of Subpart D is revised to read as follows:

§ 430.41 Prescriptions of a rule.

(a) *Criteria for exemption from preemption.* Upon petition by a State which has prescribed an energy conservation standard, water conservation standard (in the case of faucets, showerheads, water closets, and urinals), or other requirement for a type or class of covered equipment for which a Federal energy conservation standard or water conservation standard is applicable, the Secretary shall prescribe a rule that such standard not be preempted if he determines that the State has established by a preponderance of evidence that such requirement is needed to meet unusual and compelling State or local energy interests or water interests. For the purposes of this section, the term "unusual and compelling State or local energy interests or water interests" means interests which are substantially different in nature or magnitude than those prevailing in the U.S. generally, and are such that when evaluated within the context of the State's energy plan and forecast, or water plan and forecast the costs, benefits, burdens, and reliability of energy savings or water savings resulting from the State regulation make such regulation preferable or necessary when measured against the costs, benefits, burdens, and reliability of alternative approaches to energy savings or water savings or production, including reliance on reasonably predictable market-induced improvements in efficiency of all equipment subject to the State regulation. The Secretary may not prescribe such a rule if he finds that interested persons have established, by a preponderance of the evidence, that the State's regulation will significantly burden manufacturing, marketing, distribution, sale or servicing of the covered equipment on a national basis. In determining whether to make such a finding, the Secretary shall evaluate all relevant factors including: the extent to which the State regulation will increase manufacturing or distribution costs of manufacturers, distributors, and others; the extent to which the State regulation will disadvantage smaller manufacturers, distributors, or dealers or lessen competition in the sale of the covered product in the State; the extent to which the State regulation would cause a burden to manufacturers to redesign and produce the covered product type (or class), taking into consideration the extent to which the regulation would result in a reduction in the current models, or in the projected availability of models, that could be shipped on the effective date of the regulation to the State and within the U.S., or in the current or projected sales volume of the covered product type (or class) in the State and the U.S.; and the extent to which the State regulation is likely to contribute significantly to a proliferation of State appliance efficiency requirements and the cumulative impact such requirements would have. The Secretary may not prescribe such a rule if he finds that such a rule will result in the unavailability in the State of any covered product (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the State at the time of the Secretary's finding. The failure of some classes (or types) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a rule for other classes (or types).

(1) *Requirements of petition for exemption from preemption.* A petition from a State for a rule for exemption from preemption shall include the information listed in paragraphs (a)(1)(i) through (a)(1)(vi) of this section. A petition for a rule and correspondence relating to such petition shall be available for public review except for confidential or proprietary information submitted in accordance with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR part 1004:

(i) The name, address, and telephone number of the petitioner;

(ii) A copy of the State standard for which a rule exempting such standard is sought;

(iii) A copy of the State's energy plan or water plan and forecast;

(iv) Specification of each type or class of covered product for which a rule exempting a standard is sought;

(v) Other information, if any, believed to be pertinent by the petitioner; and

(vi) Such other information as the Secretary may require.

(2) [reserved]

(b) *Criteria for exemption from preemption when energy emergency conditions or water emergency conditions (in the case of faucets, showerheads, water closets, and urinals) exist within State.* Upon petition by a State which has prescribed an energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals) or other requirement for a type or class of covered product for which a Federal energy conservation standard or water conservation standard is applicable, the Secretary may prescribe a rule, effective upon publication in the **Federal Register**, that such State regulation not be preempted if he determines that in addition to meeting the requirements of paragraph (a) of this section the State has established that: an

energy emergency condition or water emergency condition exists within the State that imperils the health, safety, and welfare of its residents because of the inability of the State or utilities within the State to provide adequate quantities of gas, electric energy, or water to its residents at less than prohibitive costs; and cannot be substantially alleviated by the importation of energy or water or the use of interconnection agreements; and the State regulation is necessary to alleviate substantially such condition.

(1) *Requirements of petition for exemption from preemption when energy emergency conditions or water emergency conditions (in the case of faucets, showerheads, water closets, and urinals) exist within a State.* A petition from a State for a rule for exemption from preemption when energy emergency conditions or water emergency conditions exist within a State shall include the information listed in paragraphs (a)(1)(i) through (a)(1)(vi) of this section. A petition shall also include the information prescribed in paragraphs (b)(1)(i) through (b)(1)(iv) of this section, and shall be available for public review except for confidential or proprietary information submitted in accordance with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR part 1004:

(i) A description of the energy emergency condition or water emergency condition (in the case of faucets, showerheads, water closets, and urinals) which exists within the State, including causes and impacts.

(ii) A description of emergency response actions taken by the State and utilities within the State to alleviate the emergency condition;

(iii) An analysis of why the emergency condition cannot be alleviated substantially by importation of energy or water or the use of interconnection agreements; and

(iv) An analysis of how the State standard can alleviate substantially such emergency condition.

(2) [reserved]

(c) *Criteria for withdrawal of a rule exempting a State standard.* Any person subject to a State standard which, by rule, has been exempted from Federal preemption and which prescribes an energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals) or other requirement for a type or class of a covered product, when the Federal energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals) for such product subsequently is amended, may petition the Secretary requesting that the exemption rule be withdrawn. The Secretary shall consider such petition in accordance with the requirements of paragraph (a) of this section, except that the burden shall be on the petitioner to demonstrate that the exemption rule received by the State should be withdrawn as a result of the amendment to the Federal standard. The Secretary shall withdraw such rule if he determines that the petitioner has shown the rule should be withdrawn.

(1) *Requirements of petition to withdraw a rule exempting a State standard.* A petition for a rule to withdraw a rule exempting a State standard shall include the information prescribed in paragraphs (c)(1)(i) through (c)(1)(vii) of this section, and shall be available for public review, except for confidential or proprietary information submitted in accordance with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR part 1004:

(i) The name, address and telephone number of the petitioner;

(ii) A statement of the interest of the petitioner for which a rule withdrawing an exemption is sought;

(iii) A copy of the State standard for which a rule withdrawing an exemption is sought;

(iv) Specification of each type or class of covered product for which a rule withdrawing an exemption is sought;

(v) A discussion of the factors contained in paragraph (a) of this section;

(vi) Such other information, if any, believed to be pertinent by the petitioner; and

(vii) Such other information as the Secretary may require.

(2) [reserved]

§ 430.47 [Amended]

14. Section 430.47 of subpart D is amended in paragraph (a)(1), by revising the phrase "energy emergency condition" to read "energy emergency condition or water emergency condition (in the case of faucets, showerheads, water closets, and urinals)".

§ 430.49 [Amended]

15. Section 430.49 of subpart D is amended in paragraph (a), by adding the phrase ", water conservation standard (in the case of faucets, showerheads, water closets, and urinals)" after "energy conservation standard" in the first sentence.

Subpart E—Small Business Exemptions

§ 430.50 [Amended]

16. Section 430.50 of subpart E is amended by adding the phrase "or water conservation standards (in the case of faucets, showerheads, water closets, and urinals)." after "energy conservation standards" in paragraphs (a) and (b).

Subpart F—Certification and Enforcement

17. Section 430.60 of subpart F is revised to read as follows:

§ 430.60 Purpose and scope.

This subpart sets forth the procedures to be followed for certification and enforcement testing to determine whether a basic model of a covered product complies with the applicable energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals) set forth in subpart C of this part. Energy conservation standards and water conservation standards (in the case of faucets, showerheads, water closets, and urinals) include minimum levels of efficiency and maximum levels of consumption (also referred to as performance standards), and prescriptive energy design requirements (also referred to as design standards).

§ 430.61 [Amended]

18. Section 430.61 of subpart F is amended in paragraph (a)(4), by adding the phrase "or water conservation standard (in the case of faucets, showerheads, water closets, and urinals)" after the words "energy efficiency standard" in the first sentence.

19. Section 430.62 of subpart F is revised as follows:

§ 430.62 Submission of data.

(a) *Certification.* (1) Except as provided in paragraph (a)(2) of this section, each manufacturer or private labeler before distributing in commerce any basic model of a covered product subject to the applicable energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals) set forth in subpart C of this part shall certify by means of a compliance statement and a certification report that each basic model(s) meets the applicable energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals) as prescribed in section 325 of the Act. The compliance statement, signed by the

company official submitting the statement, and the certification report(s) shall be sent by certified mail to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Codes and Standards, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121.

(2) Each manufacturer or private labeler of a basic model of a covered clothes washer, clothes dryer, dishwasher, faucet, showerhead, water closet, or urinal shall file a compliance statement and a certification report to DOE before [date 1 year after publication of the Final Rule].

(3) The compliance statement shall include all information specified in the format set forth in appendix A of this subpart and shall certify that:

(i) The basic model(s) complies with the applicable energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals);

(ii) All required testing has been conducted in conformance with the applicable test requirements prescribed in subpart B of this part;

(iii) All information reported in the certification report(s) is true, accurate, and complete; and

(iv) The manufacturer or private labeler is aware of the penalties associated with violations of the Act, the regulations thereunder, and 18 U.S.C. 1001 which prohibits knowingly making false statements to the Federal Government.

(4) A certification report for all basic models of a covered product (a suggested format is set forth in appendix A of this subpart) shall be submitted to DOE. The certification report shall include for each basic model the product type, product class (as denoted in § 430.32), manufacturer's name, private labeler's name(s) (if applicable), the manufacturer's model number(s), and for:

(i) Central air conditioners, the seasonal energy efficiency ratio.

(ii) Central air conditioning heat pumps, the seasonal energy efficiency ratio and heating seasonal performance factor.

(iii) Clothes washers, the energy factor in ft^3/kWh/cycle and capacity in ft^3.

(iv) Clothes dryers, the energy factor in lbs/kWh, capacity in ft^3, and voltage.

(v) Direct heating equipment, the annual fuel utilization efficiency in percent and capacity in Btu/hour.

(vi) Dishwashers, the energy factor in cycles/kWh and exterior width in inches.

(vii) Faucets, the maximum water use in gpm (L/min) or gal/cycle (L/cycle) for each faucet; or the maximum water use in gpm (L/min) or gal/cycle (L/cycle) for each flow control mechanism, with a listing of accompanied faucets by manufacturer's model numbers.

(viii) Furnaces, the annual fuel utilization efficiency in percent.

(ix) General service fluorescent lamps, the testing laboratory's National Voluntary Laboratory Accreditation Program (NVLAP) identification number or other NVLAP-approved accreditation identification, production date codes (and accompanying decoding scheme), the 12-month average lamp efficacy in lumens per watt, lamp wattage, and the 12-month average Color Rendering Index.

(x) Incandescent reflector lamps, the laboratory's National Voluntary Accreditation Program (NVLAP) identification number or other NVLAP-approved accreditation identification, production date codes (and accompanying decoding scheme), the 12-month average lamp efficacy in lumens per watt, and lamp wattage.

(xi) Pool heaters, the thermal efficiency in percent.

(xii) Refrigerators, refrigerator-freezers, and freezers, the annual energy use in kWh/yr and total adjusted volume in ft^3.

(xiii) Room air conditioners, the energy efficiency ratio and capacity in Btu/hour.

(xiv) Showerheads, the maximum water use in gpm (L/min) with a listing of accompanied showerheads by manufacturer's model numbers.

(xv) Urinals, the maximum water use in gpf (Lpf).

(xvi) Water closets, the maximum water use in gpf (Lpf).

(xvii) Water heaters, the energy factor and rated storage volume in gallons.

(5) Copies of reports to the Federal Trade Commission which include the information specified in paragraph (a)(4) could serve in lieu of the certification report.

(b) *Model Modifications.* (1) Any change to a basic model which affects energy consumption or water consumption (in the case of faucets, showerheads, water closets, and urinals) constitutes the addition of a new basic model. If such change reduces consumption, the new model shall be considered in compliance with the standard without any additional testing. If, however, such change increases consumption while still meeting the standard, all information required by paragraph (a)(4) of this section for the new basic model must be submitted, by certified mail, to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Codes and Standards, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121.

(2) Prior to or concurrent with the distribution of a new model of general service fluorescent lamp or incandescent reflector lamp, each manufacturer and private labeler shall submit a statement signed by a company official stating how the manufacturer or private labeler determined that the lamp meets or exceeds the energy conservation standards, including a description of any testing or analysis the manufacturer or private labeler performed. This statement shall also list the model number or descriptor, lamp wattage and date of commencement of manufacture. Manufacturers and private labelers of general service fluorescent lamps and incandescent reflector lamps shall submit the certification report required by paragraph (a)(4) of this section within one year after the date manufacture of that new model commences.

(c) *Discontinued model.* When production of a basic model has ceased and it is no longer being distributed, this shall be reported, by certified mail, to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Codes and Standards, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121. For each basic model, the report shall include: product type, product class, the manufacturer's name, the private labeler name(s), if applicable, and the manufacturer's model number. If the reporting of discontinued models coincides with the submittal of a certification report, such information can be included in the certification report.

(d) *Maintenance of records.* The manufacturer or private labeler of any covered product subject to any of the energy performance standards, water performance standards (in the case of faucets, showerheads, water closets, and urinals), or procedures prescribed in this part shall establish, maintain, and retain the records of the underlying test data for all certification testing. Such records shall be organized and indexed in a fashion which makes them readily accessible for review by DOE upon request. The records shall include the supporting test data associated with tests performed on any test units to satisfy the requirements of this subpart. The records shall be retained by the manufacturer (private labeler) for a period of two years from the date that production of the applicable model has ceased.

(e) *Third party representation.* A manufacturer or private labeler may elect to use a third party to submit the

certification report to DOE (for example a trade association or other authorized representative). Such certification reports shall include all the information specified in paragraph (a)(4) of this section. Third parties submitting certification reports shall include the names of the manufacturers or private labelers who authorized the submittal of the certification reports to DOE on their behalf. The third party representative also may submit discontinued model information on behalf of an authorizing manufacturer.

§ 430.63 [Amended]

20. Section 430.63 of subpart F is amended in paragraph (a), by adding the phrase "or water performance standard (in the case of faucets, showerheads, water closets, and urinals)" after "energy performance standard" and revising "§ 430.23" to read "§ 430.24".

21. Section 430.70 of subpart F is amended by revising paragraphs (a)(1) introductory text, (a)(3) and (a)(6)(i), to read as follows:

§ 430.70 Enforcement.

(a) *Performance standard*—(1) *Test notice.* Upon receiving information in writing concerning the energy performance or water performance (in the case of faucets, showerheads, water closets, and urinals) of a particular covered product of a particular manufacturer or private labeler which indicates that the covered product may not be in compliance with the applicable energy performance standard or water performance standard (in the case of faucets, showerheads, water closets, and urinals), the Secretary may conduct testing of that covered product under this subpart by means of a test notice addressed to the manufacturer in accordance with the following requirements:

* * * * *

(3) *Sampling.* The determination that a manufacturer's basic model complies with the applicable energy performance standard or water performance standard (in the case of faucets, showerheads, water closets, and urinals) shall be based on the testing conducted in accordance with the statistical sampling procedures set forth in appendix B of this subpart and the test procedures set forth in subpart B of this part.

* * * * *

(6) *Testing at manufacturer's option.* (i) If a manufacturer's basic model is determined to be in noncompliance with the applicable energy performance standard or water performance standard (in the case of faucets, showerheads, water closets, and urinals) at the conclusion of DOE testing in accordance with the double sampling plan specified in appendix B of this subpart, the manufacturer may request that DOE conduct additional testing of the model according to procedures set forth in appendix B of this subpart.

* * * * *

§ 430.73 [Amended]

22. Section 430.73 of subpart F is amended by adding the phrase "or water conservation standard (in the case of faucets, showerheads, water closets, and urinals)" after "energy conservation standard" in the introductory paragraph.

23. Appendix A to subpart F of Part 430 is revised to read as follows:

Appendix A To Subpart F of Part 430—Compliance Statement and Certification Report

COMPLIANCE STATEMENT

Product: _____

Manufacturer's or Private Labeler's Name and Address:

_____

_____

_____

This compliance statement and all certification reports submitted are in accordance with 10 CFR Part 430 (Energy or Water Conservation Program for Consumer Products) and the Energy Policy and Conservation Act, as amended. The compliance statement is signed by a responsible official of the above named company. The basic model(s) listed in certification reports comply with the applicable energy conservation standard or water (in the case of faucets, showerheads, water closets, and urinals) conservation standard. All testing on which the certification reports are based was conducted in conformance with applicable test requirements prescribed in 10 CFR part 430 subpart B. All information reported in the certification report(s) is true, accurate, and complete. The company is aware of the penalties associated with violations of the Act, the regulations thereunder, and is also aware of the provisions contained in 18 U.S.C. 1001, which prohibits knowingly making false statements to the Federal Government.

Name of Company Official: _____

Signature: _____

Title: _____

Firm or Organization: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

Date: _____

Third Party Representation (if applicable)

For certification reports prepared and submitted by a third party organization under the provisions of § 430.62 of 10 CFR part 430, the company official who authorized said third party representation is:

Name: _____

Title: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

The third party organization submitting the certification report on behalf of the company is:

Third Party Organization: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

CERTIFICATION REPORT

Date: _____

Product Type: _____

Product Class: _____

Manufacturer: _____

Private Labeler (if applicable): _____

Name: _____

Title: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

For Existing, New, or Modified Models [1]:

For Discontinued Models [2]:

24. Appendix B to Subpart F of Part 430 is revised as follows:

Appendix B To Subpart F of Part 430—Sampling Plan For Enforcement Testing

Double Sampling

Step 1. The first sample size (n_1) must be four or more units.

Step 2. Compute the mean ($\bar{x}_1$) of the measured energy performance or water performance (in the case of faucets, showerheads, water closets, and urinals) of the n_1 units in the first sample as follows:

$$\bar{x}_1 = \frac{1}{n_1}\left(\sum_{i=1}^{n_1} x_i\right) \qquad (1)$$

where ($\bar{x}_1$) is the measured energy efficiency, energy or water (in the case of faucets, showerheads, water closets, and urinals) consumption of unit I.

Step 3. Compute the standard deviation (s_1) of the measured energy or water performance of the (n_1) units in the first sample as follows:

$$s_1 = \sqrt{\frac{\sum_{i=1}^{n_1}\left(x_i - \bar{x}_1\right)^2}{n_1 - 1}} \qquad (2)$$

Step 4. Compute the standard error ($S_{\bar{x}_1}$) of the measured energy or water performance of the n_1 units in the first sample as follows:

$$s_{\bar{x}_1} = \frac{s_1}{\sqrt{n_1}} \qquad (3)$$

Step 5. Compute the upper control limit (UCL_1) and lower control limit (LCL_1) for the mean of the first sample using the applicable DOE energy or water performance standard (EPS) as the desired mean and a probability level of 95 percent (two-tailed test) as follows:

---

[1] Provide specific product information including, for each basic model, the manufacturer's model numbers and the information required in § 430.62(a)(4)(i) through (a)(4)(xvii)).

[2] Provide manufacturer's model number.

$$LCL_1 = EPS - ts_{\bar{x}_1} \qquad (4)$$

$$UCL_1 = EPS + ts_{\bar{x}_1} \qquad (5)$$

where t is a statistic based on a 95 percent two-tailed probability level and a sample size of n_1.

Step 6(a). For an Energy Efficiency Standard, compare the mean of the first sample ($\bar{x}_1$) with the upper and lower control limits (UCL_1 and LCL_1) to determine one of the following:

(1) If the mean of the first sample is below the lower control limit, then the basic model is in noncompliance and testing is at an end. (Do not go on to any of the steps below.)

(2) If the mean of the first sample is equal to or greater than the upper control limit, then the basic model is in compliance and testing is at an end. (Do not go on to any of the steps below.)

(3) If the sample mean is equal to or greater than the lower control limit but less than the upper control limit, then no determination of compliance or noncompliance can be made and a second sample size is determined by Step 7(a).

Step 6(b). For an Energy or Water Consumption Standard, compare the mean of the first sample ($\bar{x}_1$) with the upper and lower control limits (UCL_1 and LCL_1) to determine one of the following:

(1) If the mean of the first sample is above the upper control limit, then the basic model is in noncompliance and testing is at an end. (Do not go on to any of the steps below.)

(2) If the mean of the first sample is equal to or less than the lower control limit, then the basic model is in compliance and testing is at an end. (Do not go on to any of the steps below.)

(3) If the sample mean is equal to or less than the upper control limit but greater than the lower control limit, then no determination of compliance or noncompliance can be made and a second sample size is determined by Step 7(b).

Step 7(a). For an Energy Efficiency Standard, determine the second sample size (n_2) as follows:

$$n_2 = \left(\frac{ts_1}{0.05\ EPS}\right)^2 - n_1 \qquad (6a)$$

where s_1 and t have the values used in Steps 4 and 5, respectively. The term "0.05 EPS" is the difference between the applicable energy efficiency standard and 95 percent of the standard, where 95 percent of the standard is taken as the lower control limit. This procedure yields a sufficient combined sample size (n_1+n_2) to give an estimated 97.5 percent probability of obtaining a determination of compliance when the true mean efficiency is equal to the applicable standard. Given the solution value of n_2, determine one of the following:

(1) If the value of n_2 is less than or equal to zero and if the mean energy efficiency of the first sample ($\bar{x}_1$) is either equal to or greater than the lower control limit (LCL_1) or equal to or greater than 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if $n_2 \le 0$ and $\bar{x}_1 \ge$ max (LCL_1, 0.95 EES), the basic model is in compliance and testing is at an end.

(2) If the value of n_2 is less than or equal to zero and the mean energy efficiency of the first sample ($\bar{x}_1$) is less than the lower control limit (LCL_1) or less than 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if $n_2 \le 0$ and $\bar{x}_1 \ge$ max (LCL_1, 0.95 EES), the basic model is in noncompliance and testing is at an end.

(3) If the value of n_2 is greater than zero, then value of the second sample size is determined to be the smallest integer equal to or greater than the solution value of n_2 for equation (6a). If the value of n_2 so calculated is greater than $20-n_1$, set n_2 equal to $20-n_1$.

Step 7(b). For an Energy or Water Consumption Standard, determine the second sample size (n_2) as follows:

$$n_2 = \left(\frac{ts_1}{0.05\ EPS}\right)^2 - n_1 \qquad (6b)$$

where s_1 and t have the values used in Steps 4 and 5, respectively. The term "0.05 EPS" is the difference between the applicable energy or water consumption standard and 105 percent of the standard, where 105 percent of the standard is taken as the upper control limit. This procedure yields a sufficient combined sample size (n_1+n_2) to give an estimated 97.5 percent probability of obtaining a determination of compliance when the true mean consumption is equal to the applicable standard. Given the solution value of n_2, determine one of the following:

(1) If the value of n_2 is less than or equal to zero and if the mean energy or water consumption of the first sample ($\bar{x}_1$) is either equal to or less than the upper control limit (UCL_1) or equal to or less than 105 percent of the applicable energy or water performance standard (EPS), whichever is less, i.e., if $n_2 \le 0$ and $\bar{x}_1 \le$ min (UCL_1, 1.05 EPS), the basic model is in compliance and testing is at an end.

(2) If the value of n_2 is less than or equal to zero and the mean energy or water consumption of the first sample ($\bar{x}_1$) is greater than the upper control limit (UCL_1) or more than 105 percent of the applicable energy or water performance standard (EPS), whichever is less, i.e., if $n_2 \le 0$ and $\bar{x}_1 >$ min (UCL_1, 1.05 EPS), the basic model is in noncompliance and testing is at an end.

(3) If the value of n_2 is greater than zero, then the value of the second sample size is determined to be the smallest integer equal to or greater than the solution value of n_2 for equation (6b). If the value of n_2 so calculated is greater than $20-n_1$, set n_2 equal to $20-n_1$.

Step 8. Compute the combined mean ($\bar{x}_2$) of the measured energy or water performance of the n_1 and n_2 units of the combined first and second samples as follows:

$$\bar{x}_2 = \frac{1}{n_1+n_2}\left(\sum_{i=1}^{n_1+n_2} x_i\right) \qquad (7)$$

Step 9. Compute the standard error (S_{x_i}) of the measured energy or water performance of the n_1 and n_2 units in the combined first and second samples as follows:

$$s_{\bar{x}_2} = \frac{s_1}{\sqrt{n_1+n_2}} \qquad (8)$$

Note: s_1 is the value obtained in Step 3.

Step 10(a). For an Energy Efficiency Standard, compute the lower control limit (LCL_2) for the mean of the combined first and second samples using the DOE energy efficiency standard (EES) as the desired mean and a one-tailed probability level of 97.5 percent (equivalent to the two-tailed probability level of 95 percent used in Step 5) as follows:

$$LCL_2 = EES - ts_{\bar{x}_2} \qquad (9a)$$

where the t-statistic has the value obtained in Step 5.

Step 10(b). For an Energy or Water Consumption Standard, compute the upper control limit (UCL_2) for the mean of the combined first and second samples using the DOE energy or water performance standard (EPS) as the desired mean and a one-tailed probability level of 102.5 percent (equivalent to the two-tailed probability level of 95 percent used in Step 5) as follows:

$$UCL_2 = EPS + ts_{\bar{x}_2} \qquad (9b)$$

where the t-statistic has the value obtained in Step 5.

Step 11(a). For an Energy Efficiency Standard, compare the combined sample mean ($\bar{x}_2$) to the lower control limit (LCL_2) to find one of the following:

(1) If the mean of the combined sample ($\bar{x}_2$) is less than the lower control limit (LCL_2) or 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if $\bar{x}_2 <$ max (LCL_2, 0.95 EES), the basic model is in noncompliance and testing is at an end.

(2) If the mean of the combined sample ($\bar{x}_2$) is equal to or greater than the lower control limit (LCL_2) or 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if $\bar{x}_2 \ge$ max (LCL_2, 0.95 EES), the basic model is in compliance and testing is at an end.

Step 11(b). For an Energy or Water Consumption Standard, compare the combined sample mean ($\bar{x}_2$) to the upper control limit (UCL_2) to find one of the following:

(1) If the mean of the combined sample ($\bar{x}_2$) is greater than the upper control limit (UCL_2) or 105 percent of the applicable energy or water performance standard (EPS), whichever is less, i.e., if $\bar{x}_2 >$ min (UCL_2, 1.05 EPS), the basic model is in noncompliance and testing is at an end.

(2) If the mean of the combined sample ($\bar{x}_2$) is equal to or less than the upper control limit (UCL_2) or 105 percent of the applicable energy or water performance standard (EPS), whichever is less, i.e., if $\bar{x}_2 \le$ min (UCL_2, 1.05 EPS), the basic model is in compliance and testing is at an end.

Manufacturer-Option Testing

If a determination of non-compliance is made in Steps 6, 7 or 11, the manufacturer may request that additional testing be conducted, in accordance with the following procedures.

Step A. The manufacturer requests that an additional number, n_3, of units be tested,

with n_3 chosen such that $n_1+n_2+n_3$ does not exceed 20.

Step B. Compute the mean energy or water performance, standard error, and lower or upper control limit of the new combined sample in accordance with the procedures prescribed in Steps 8, 9, and 10, above.

Step C. Compare the mean performance of the new combined sample to the revised lower or upper control limit to determine one of the following:

a.1. For an Energy Efficiency Standard, if the new combined sample mean is equal to or greater than the lower control limit or 95 percent of the applicable energy efficiency standard, whichever is greater, the basic model is in compliance and testing is at an end.

a.2. For an Energy or Water Consumption Standard, if the new combined sample mean is equal to or less than the upper control limit or 105 percent of the applicable energy or water consumption standard, whichever is less, the basic model is in compliance and testing is at an end.

b.1. For an Energy Efficiency Standard, if the new combined sample mean is less than the lower control limit or 95 percent of the applicable energy efficiency standard, whichever, is greater, and the value of $n_1+n_2+n_3$ is less than 20, the manufacturer may request that additional units be tested. The total of all units tested may not exceed 20. Steps A, B, and C are then repeated.

b.2. For an Energy or Water Consumption Standard, if the new combined sample mean is greater than the upper control limit or 105 percent of the applicable energy or water consumption standard, whichever is less, and the value of $n_1+n_2+n_3$ is less than 20, the manufacturer may request that additional units be tested. The total of all units tested may not exceed 20. Steps A, B, and C are then repeated.

c. Otherwise, the basic model is determined to be in noncompliance.

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Part III

Department of Education

Jacob K. Javits Gifted and Talented Students Education Program Notice Inviting Applications for New Awards for Fiscal Years 1998 and 1999; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 206A]

Jacob K. Javits Gifted and Talented Students Education Program Notice Inviting Applications for New Awards for Fiscal Years 1998 and 1999

Purpose of Program: To provide grants to help build a nationwide capability in elementary and secondary schools to identify and meet the special educational needs of gifted and talented students; to encourage the development of rich and challenging curricula for all students; and to supplement and make more effective the expenditures of State and local funds for the education of gifted and talented students.

For fiscal years (FY) 1998 and 1999 the competition is based on an absolute priority. This priority supports projects that establish and operate model programs to serve gifted and talented students in schools in which at least 50 percent of the students enrolled are from low-income families. Within this absolute priority, the Secretary gives a competitive preference to projects that implement model programs in one or more schools in an Empowerment Zone or Enterprise Community. A list of areas that have been designated as Empowerment Zones and Enterprise Communities is published as an appendix to this notice.

Eligible Applicants: State educational agencies; local educational agencies; institutions of higher education; and other public and private agencies and organizations, including Indian tribes and organizations—as defined by the Indian Self-Determination and Education Assistance Act—and Native Hawaiian organizations.

Deadline for Transmittal of Applications: May 15, 1998.

Deadline for Intergovernmental Review: July 15, 1998.

Applications Available: March 30, 1998.

Available Funds: $1,020,000.

Estimated Range of Awards: $100,000–$215,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Maximum Award: In no case does the Secretary make an award greater than $215,000 for a single budget period of 12 months. The Secretary does not consider an application that proposes a budget exceeding this maximum amount.

Project Period: Up to 36 months. Please note that all applicants for multi-year awards are required to provide detailed budget information for the total project period requested. The Department will negotiate at the time of the initial award the funding levels for each year of the grant award.

Supplementary Information: It is the Department's intent to fund two cycles of awards from this competition. The first cycle of awards will be made from FY 1998 funds. If applications of high quality remain unfunded, additional awards will be made in the second cycle in 1999, pending availability of FY 1999 funds.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; (b) 34 CFR Part 700; and (c) 34 CFR Part 299.

Note: The regulations in 34 CFR Part 791 previously applicable to this program will no longer apply to this program. See the **Federal Register** of April 29, 1996 (61 FR 1860).

Priorities: The priorities in the notice of final priorities for this program, as published in the **Federal Register** on April 24, 1996 (61 FR 18241) and repeated below apply to this competition.

Absolute Priority—Model Programs (CFDA 206A)

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that establish and operate model programs to serve gifted and talented students in schools in which at least 50 percent of the students enrolled are from low-income families. Projects must include students who may not be served by traditional gifted and talented programs, including economically disadvantaged students, limited English proficient students, and students with disabilities. The projects must incorporate high-level content and performance standards in one or more of the core subject areas as well as utilize innovative teaching strategies. The projects must provide comprehensive ongoing professional development opportunities for staff. The projects must incorporate training for parents in ways to support their children's educational progress. There must also be comprehensive evaluation of the projects' activities.

Competitive Preference Priority—Empowerment Zone or Enterprise Community

Within this absolute priority concerning model projects, the Secretary, under 34 CFR 75.105(c)(2)(1), gives preference to applications that meet the following competitive priority. The Secretary awards five (5) points to an application that meets this competitive priority:

Projects that implement model programs in one or more schools in an Empowerment Zone or Enterprise Community or that primarily serve students who reside in the EZ or EC. Applicants must ensure that the proposed program relates to the strategic plan and will be an integral part of the Empowerment Zone or Enterprise Community program.

For Applications or Information Contact: Janet Williams or Kelley Berry, U.S. Department of Education, 555 New Jersey Avenue, NW, room 502, Washington, DC 20208–5645; Facsimile machine: (202) 219–2053; Telephone: (202) 219–1674 or (202) 219–2096, respectively. 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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Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting either person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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Note: The official version of a document is the document published in the **Federal Register.**

Program Authority: 20 U.S.C. 8031–8036.

Dated: March 12, 1998.

Ricky T. Takai,

Acting Assistant Secretary for Educational Research and Improvement.

Appendix—Empowerment Zones and Enterprise Communities

Empowerment Zones

California: Los Angeles
California: Oakland
Georgia: Atlanta
Illinois: Chicago
Kentucky: Kentucky Highlands*
Maryland: Baltimore
Massachusetts: Boston
Michigan: Detroit
Mississippi: Mid Delta*
Missouri/Kansas: Kansas City, Kansas City
New York: Harlem, Bronx
Ohio: Cleveland
Pennsylvania/New Jersey: Philadelphia, Camden
Texas: Houston
Texas: Rio Grande Valley*

Enterprise Communities

Alabama: Birmingham
Alabama: Chambers County*
Alabama: Greene, Sumter Counties*
Arizona: Phoenix
Arizona: Arizona Border*
Arkansas: East Central*
Arkansas: Mississippi County*
Arkansas: Pulaski County
California: Imperial County*
California: L.A., Huntington Park
California: San Diego
California: San Francisco, Bayview, Hunter's Point
California: Watsonville*
Colorado: Denver
Connecticut: Bridgeport
Connecticut: New Haven
Delaware: Wilmington
District of Columbia: Washington
Florida: Jackson County*
Florida: Tampa
Florida: Miami, Dade County
Georgia: Albany
Georgia: Central Savannah*
Georgia: Crisp, Dooley Counties*
Illinois: East St. Louis
Illinois: Springfield
Indiana: Indianapolis
Iowa: Des Moines
Kentucky: Louisville
Louisiana: Northeast Delta*
Louisiana: Macon Ridge*
Louisiana: New Orleans
Louisiana: Ouachita Parish
Massachusetts: Lowell
Massachusetts: Springfield
Michigan: Five Cap*
Michigan: Flint
Michigan: Muskegon
Minnesota: Minneapolis
Minnesota: St. Paul
Mississippi: Jackson
Mississippi: North Delta*
Missouri: East Prairie*
Missouri: St. Louis
Nebraska: Omaha
Nevada: Clarke County, Las Vegas
New Hampshire: Manchester
New Jersey: Newark
New Mexico: Albuquerque
New Mexico: Mora, Rio Arriba, Taos Counties*
New York: Albany, Schenectady, Troy
New York: Buffalo
New York: Newburgh, Kingston
New York: Rochester
North Carolina: Charlotte
North Carolina: Halifax, Edgecombe, Wilson Counties*
North Carolina: Robeson County*
Ohio: Akron
Ohio: Columbus
Ohio: Greater Portsmouth*
Oklahoma: Choctaw, McCurtain Counties*
Oklahoma: Oklahoma City
Oregon: Josephine*
Oregon: Portland
Pennsylvania: Harrisburg
Pennsylvania: Lock Haven*
Pennsylvania: Pittsburgh
Rhode Island: Providence
South Dakota: Deadle, Spink Counties*
South Carolina: Charleston
South Carolina: Williamsburg County*
Tennessee: Fayette, Haywood Counties*
Tennessee: Memphis
Tennessee: Nashville
Tennessee/Kentucky: Scott, McCreary Counties*
Texas: Dallas
Texas: El Paso
Texas: San Antonio
Texas: Waco
Utah: Ogden
Vermont: Burlington
Virginia: Accomack*
Virginia: Norfolk
Washington: Lower Yakima*
Washington: Seattle
Washington: Tacoma
West Virginia: West Central*
West Virginia: Huntington
West Virginia: McDowell*
Wisconsin: Milwaukee

*Denotes rural designee.

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Federal home loan bank system:
- Membership application process; comments due by 3-23-98; published 2-19-98

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